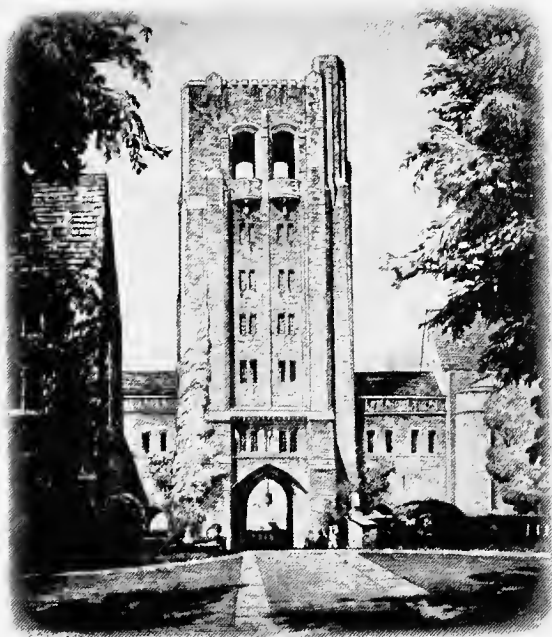




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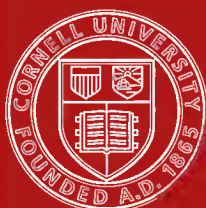
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THE LAW
OF
TRUSTS AND TRUSTEES

BY

ARTHUR REGINALD RUDALL

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW

AND

JAMES WILLIAM GREIG, LL.B., B.A. LOND.

OF LINCOLN'S INN, BARRISTER-AT-LAW

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PREFACE TO THE FOURTH EDITION.

SINCE the Third Edition of this work was published (in 1904) The Public Trustee Act, 1906, has come into operation, and, as that Act has introduced a new and important element into the law relating to Trustees, the Authors have thought it necessary to publish a new edition.

The present edition incorporates the Public Trustee Act, with Notes on its various sections and the Rules made in pursuance of the Act. It also contains, it is believed, all the Cases which have been decided on the subjects dealt with by the work since the last edition was published.

A. R. RUDALL.

J. W. GREIG.

LINCOLN'S INN,

January, 1911.

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56 & 57 Vict. c. 39	(The Industrial and Provident Societies Act, 1893), 175.
56 & 57 Vict. c. 53	(Trustee Act, 1893), 343, 472, 474, 475, 476, 477, 490, 492, 495.
57 & 58 Vict. c. 10	(Trustee Act, 1893, Amendment Act, 1894), 46, 103, 162, 183, 207, 220, 252, 337.
57 & 58 Vict. c. 46	(Copyhold Act, 1894), 74, 132, 181.
57 & 58 Vict. c. 47	(Building Societies Act, 1894), 37.
58 & 59 Vict. c. 25	(Mortgagees' Legal Costs Act, 1895), 149, 150, 202.
59 & 60 Vict. c. 8	(Life Assurance Companies [Payment into Court] Act, 1896), 209.
59 & 60 Vict. c. 35	(Judicial Trustees Act, 1896), 8, 63, 140, 258, 296, 297, 298.
60 & 61 Vict. c. 65	(Land Transfer Act, 1897), 99, 133, 137, 173, 204, 286, 288, 508.
62 & 63 Vict. c. 20	(Bodies Corporate [Joint Tenancy] Act, 1899), 160, 299.
63 & 64 Vict. c. 62	(Colonial Stock Act, 1900), 35.
1 Edw. VII. c. 10	(Larceny Act, 1901), 13.
2 Edw. VII. c. 41	(Metropolis Water Act, 1902), 35.
3 Edw. VII. c. 37	(Irish Land Act, 1903), 47, 275.
6 Edw. VII. c. 55	(Public Trustee Act, 1906), 76, 87, 160, 248, 264, 265.
7 Edw. VII. c. 18	(Married Women's Property Act, 1907), 78, 80, 81, 113.
8 Edw. VII. c. 47	(Lunacy Act, 1908), 165.

ABBREVIATIONS OF REFERENCES TO REPORTS.

Amh.	-		Ambler's Reports.
Anst.			Anstruther's Reports.
App. Ca.			Appeal Cases.
Atk.			Atkyn's Reports.
B. & C. or Barn. & Cress.			Barnewall & Cresswell's Reports.
Bail Ct. Cas.			Bail Court Cases.
Beav.			Beavan's Reports.
Bing.			Bingham's Reports.
Bro. C. C.			Brown's Chancery Cases.
Campb.			Campbell's Reports.
Ch. Ca.			Cases in Chancery.
Ch. D.			Chancery Division.
Cl. & Fin.			Clark & Finnelly's Reports.
C. B.			Common Bench Reports.
Cr. & Ph.			Craig and Phillips's Reports.
D. & C.			Deacon & Chitty's Reports.
D. & S.			Doctor & Student.
De G. F. & J.			De Gex, Fisher & Jones's Reports.
De G. & J.			De Gex & Jones's Reports.
De G. J. & S.			De Gex, Jones and Smith's Reports.
De G. M. & G.			De Gex, Macnaghten & Gordon's Reports.
De G. & Sm.			De Gex & Smale's Reports.
Dr.			Drury's Reports (Ireland).
Dr. & Sm.			Drewry & Smale's Reports.
Dr. & Wal.			Drury & Walsh's Reports (Ireland).
Drew.			Drewry's Reports.
Drn. & War.			Drury & Warren's Reports (Ireland).
Eq. Rep.			Equity Reports.
Exch.			Exchequer Cases (Welsby, Hurlstone & Gordon's Reports).
Exch. D.			Exchequer Division.
Giff.			Giffard.
Gl. & J.			Glyn & Jameson.
H. L. C.			House of Lords Cases.
Hagg.			Haggard.
Ha.			Hare's Reports.
Hem. & M.			Hemming & Miller's Reports.
Ir. Law & Eq.			Irish Law & Equity Reports.
Ir. Eq. R.			Irish Law & Equity Reports.
J. & W.			Jacob & Walker's Reports.
J. & H.			Johnson & Hemming's Reports.
Johns.			Johnson's Reports.
Jon. & Lat.			Jones & Latouche's Reports (Ireland).
Jur.			Jurist.
Jur., N. S.			Jurist (New Series).
Kay			Kay's Reports.
K. & J.			Kay & Johnson's Reports.
L. J.			Law Journal.
L. T., N. S., Ch.			Law Times (New Series), Chancery.
L. T. or L. T., O. S.			Law Times (Old Series).
L. R., C. P.			Law Reports, Common Pleas.
L. R., Ch.			Law Reports, Chancery Appeals.
L. R., Exch.			Law Reports, Exchequer.
L. R., Eq.			Law Reports, Equity.

L. R., H. L.	Law Reports, House of Lords English and Irish Appeals.
L. R., Sc. & D.	Law Reports, Scotch and Divorce Appeals.
L. R., P. & D.	Law Reports, Probate and Divorce.
L. R., Q. B.	Law Reports, Queen's Bench.
L. R., Ir.	Law Reports, Ireland.
Lloyd & G.	Lloyd & Goold.
M. & G.	Macnaghten and Gordon's Reports.
M. & W.	Meeson & Welsby's Reports.
Madd.	Maddock's Reports.
Mont. & A.	Montagu & Ayrton's Reports.
Mont. & M'A.	Montagu & McArthur's Reports.
Mos.	Moseley's Reports.
My. & Cr.	Mylne & Craig's Reports.
My. & K.	Mylne & Keene's Reports.
N. R.	New Reports (by Bosanquet and Puller).
P. D.	Probate Division (Law Reports).
P. Wms.	Peere Williams.
Ph.	Phillips's Reports.
Phillim.	Phillimore.
Pr.	Price's Reports.
Q. B. D.	Queen's Bench Division (Law Reports).
R.	The Reports.
Rose	Rose's Reports.
R. S. C. -	Rules of Supreme Court.
Russ.	Russell's Reports (Chancery).
Russ. & My.	Russell & Mylne's Reports.
Ry. & Mo.	Ryan & Moody's Reports.
S. C.	Same Case.
Salk.	Salkeld.
Sch. & Lef.	Schoales & Lefroy (Ireland).
S. & S. -	Simons & Stuart's Reports.
Sel. Ch. Ca.	Selwyn's Select Cases in Chancery.
Sim.	Simon's Reports.
Sm. & G.	Smale & Giffard's Reports.
Sm. & Giff. App.	Smale & Giffard's Appendix.
Sol. J.	Solicitors' Journal.
Sw.	Swanston.
Swab.	Swabey's Admiralty Reports.
T. L. R. -	Times Law Reports.
Vern.	Vernon's Reports.
Ves.	Vesey's Reports.
Ves. & Bea.	Vesey & Beames's Reports.
Ves. Sen.	Vesey Senior's Reports.
W. N.	Weekly Notes.
W. R. -	Weekly Reporter.
White & Tudor's L. C.	White & Tudor's Leading Cases.
Y. & C. Exch.	Younge & Collyer's Exchequer Equity Reports.
Y. & C. C.	Younge & Collyer's Chancery Cases.
Y. & Jerv.	Younge & Jervis's Exchequer Reports.
[1897, or as may be] Ch.	Chancery Division and Linnacy, and Appeals therefrom, in Court of Appeal (Law Reports).
[1897, or as may be] Q. B. or K. B.	Queen's Bench or King's Bench, and Appeals therefrom, in Court of Appeal (Law Reports).
[1897, or as may be] P.	Probate, Divorce, and Admiralty, and Appeals there- from, in Court of Appeal (Law Reports).
[1897, or as may be] App. Ca. or A. C.	Appeal Cases before the House of Lords (Law Reports).

INTRODUCTION TO THE FIRST EDITION (1894).

THE TRUSTEE ACT, 1893, is a much-needed consolidation of the many existing Statutes relating to Trusts and Trustees, and, as a Code of Trust Law, cannot fail to be extremely useful to Trustees and their advisers, as well as to practitioners in the Courts. This book is an attempt to elucidate the provisions of the Act by the light of the decisions on the Acts repealed and re-enacted in the new Act, and of the various decisions on the Act itself, and the Authors hope that it will be found of assistance to Trustees and those called on to advise them.

It is one of the standing reproaches against English Law that its rules and principles are not to be found in any Code, or even body of Statutes, but are scattered through Acts of Parliament, books of reported decisions, and even the works of ancient text-book writers. To the layman the maze seems interminable, and it is only after years of training that the lawyer even knows where to find the law, and then the best part of his knowledge is but "index learning which turns no student pale." Efforts, however, have within the last fifty years been directed to simplifying and rendering the law more accessible. These efforts have proceeded on two main lines—first, by removing from the Statute Book legislation which has become incompatible with modern ideas, though still remaining part of the law, since no English Statute becomes obsolete merely by lapse of time; and, secondly, by codifying various branches of the law as time and opportunity have permitted. To the Statute Law Revision Committee is entrusted the first duty, while the latter has been undertaken by Parliament itself.

To codify the whole of the laws of England would be a herculean task, though there is, perhaps, some ground for thinking it not altogether an impossible one, in view of the great success which has attended the codification of the law in India. The efforts of recent years, though piecemeal and halting in their mode of procedure, have, nevertheless, it must be admitted, effected much, and give promise of more systematic and extended work in the future. The

Lands Clauses Act, 1845, The Bills of Exchange Acts, 1882 to 1892, The Companies Acts, 1862 to 1900, The Partnership Act, 1890, and The Sale of Goods Act, 1893, are instances of attempts at codification and consolidation.

Codification of any branch of law, to be complete and perfect, should extend not only to collection and actual re-enactment but should also be accompanied by a legislative provision that decided cases are not to be taken as laying down the law, as they virtually do at present, but are to be used as mere aids in construing the text of the Code. But this view of codification has never been unreservedly adopted in England, and the law-makers will probably continue the work of legislation for the simplification of existing law in the same haphazard and partially effective way as hitherto.

The Acts which this book attempts to elucidate are directed to codifying the law relating to Trustees so far as it at present exists in the form of Statutes. The Acts in question do not attempt to codify the principles which have been evolved by the decisions of Courts of Equity. The Notes, however, aim not only at elucidating the text of the Acts, but also at epitomising and explaining the general Law of Trusts as modified by recent legislation and the decided cases. These decisions must still be sought in the numberless volumes of Law Reports.

A Bill to Codify both the Statute Law and the Case Law relating to Trusts and Trustees was indeed introduced into Parliament some years ago, but failed to pass. The Trustee Act, 1893, is less ambitious, but its effect has been to expunge from the Statute Book a series of enactments ranging from 1796 down to 1893. That it was not made even more complete is regrettable, for it still leaves unrepealed Sections 1 and 8 of The Trustee Act, 1888, and Sections 1 and 7 of The Trust Investment Act, 1889, which might with advantage have been repealed and re-enacted in The Trustee Act, 1893.

The Act of 1893 (which is the principal Statute) is styled "An Act to Consolidate Enactments Relating to Trustees"; but, as a matter of fact, it here and there enacts new law, though more as a corollary and natural effect of codifying the old law than as the result of deliberate intention to alter or extend that law. For instance, Section 21, which replaces Section 37 of The Conveyancing Act, 1881, extends the powers of that section to Administrators.

The Act is divided into four Parts, as follows:—

PART I.—INVESTMENTS.

PART II.—VARIOUS POWERS AND DUTIES OF TRUSTEES.

PART III.—POWERS OF THE COURT.

PART IV.—MISCELLANEOUS AND SUPPLEMENTAL.

In Part I. Sections 1 to 7 are virtually a re-enactment of the extremely useful Trust Investment Act, 1889, which widened the powers of investment of trustees to a considerable extent.

Sections 8 and 9 are a re-enactment of the very valuable and important Sections 4 and 5 of The Trustee Act, 1888, which, combined with Sections 6 and 8 of that Act, effected a revolution in trust law as to the liability of trustees for breaches of trust, and the application to them of the Statute of Limitations. The serious depreciation in the value of real property which has taken place in recent years has brought to light many cases of investment by trustees where, with the best intentions but with disastrous results to themselves or the beneficiaries, they have overstepped the line of caution laid down by Courts of Equity. The inability, too, of trustees to plead the Statute of Limitations as a defence to stale claims in respect of trusts had long been a source of considerable injustice.

It is popularly supposed that the true test of the conduct of a trustee in regard to investment and the other duties of his trust is, that he should act as an ordinarily cautious and prudent man would act in his own affairs; but it is constantly forgotten that Courts of Equity have endeavoured to define exactly in what manner such a person would, and should, act. For instance, in the matter of the advance of trust money on mortgage, the Courts, as long ago as 1836, laid down the rule that trustees ought not to lend more than two-thirds of the estimated value upon freehold agricultural property, or more than one half of the estimated value of house property; though it constantly occurs that persons acting for themselves leave a much smaller margin, without forfeiting their claim to be considered prudent and cautious investors.

Lindley, L. J., in a well known case (*re Whiteley*, *Whiteley v. Learoyd*, 33 Ch. D. 347, at p. 355), while accepting the rule of the “ordinarily prudent man of business,” expressed the opinion that, in applying it, care must be taken not to lose sight of the

fact that the business of the trustee, unlike that which the ordinarily prudent man is supposed to be conducting for himself, is that of investing money for the benefit of persons who are to enjoy it at some future time, and not for the benefit of the person entitled to the present income.

The duty of a trustee is, not to take such care only as a prudent man would take if he had only himself to consider: it is rather to take such care "*as an ordinarily prudent man would take if he were minded to make an investment for the benefit of other people for whom he felt morally bound to provide*"—a standard far different from that popularly supposed to be the guide for trustees.

The difficulties of a trustee's position are very great, since on the one hand he is exposed to the importunities of beneficiaries desirous of increasing their income, even at the risk of insecure investment of the capital, and on the other hand are the Courts, enforcing with extreme rigour the law relating to the liability of trustees. The natural result has been that it is extremely difficult to induce responsible persons to undertake the burdensome and thankless office of trustee. In fact, the creation of a Public Trustee, to take over the management of trusts, would be a legislative achievement of lasting value. A step in this direction has been taken by the passing of The Judicial Trustees Act, 1896, which enables the Court to appoint a judicial trustee of trust funds, either alone or jointly with ordinary trustees. Moreover, this Act (by Section 3) gives power to the Court to relieve trustees in cases of what may be called "honest breaches of trust." The Act will be found fully commented on in its place.

The Act of 1888 (re-enacted in the Act of 1893 except as to Sections 1 and 8, which were left unrepealed) effected a beneficial revolution in the law relating to the liability of trustees; and now a trustee who may have invested in agricultural or house property (after having obtained the report of an able practical surveyor), which subsequently depreciates, or a trustee who advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, is in the former case not liable at all, and in the latter is liable to make good only the sum advanced in excess of the proper sum.

The Act of 1893 (Part II., Sections 10, 11 and 12) re-enacts the useful provisions of The Conveyancing Act, 1881, which dealt

with the Appointment of New Trustees, and introduced the simple and effective method of transferring certain kinds of trust property from old to new trustees, known as the Vesting Declaration.

Sections 13, 14, 15, and 16 are also a re-enactment of parts of The Trustee Act, 1888, which effected some useful alterations in the law relating to Sales by Trustees.

Part III. of the Act deals with the Appointment of New Trustees and Vesting Orders. This portion is a very useful and valuable consolidation of the various Statutes dealing with the circumstances under which the Court can appoint new trustees, and the powers of the Court in actions relating to trust property generally; and Section 42 deals with the important question of Payment into Court of Trust Moneys. The Act consolidates a number of enactments on this matter, and the practice will no doubt be much simplified.

The remaining Sections of the Act of 1893 need not be adverted to, except to remark that the Definition Section seems to be at once clear and concise, and will compare very favourably with the long and intricate Definition Sections in the repealed Acts.

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INTRODUCTION TO THE PUBLIC TRUSTEE ACT, 1906.

SINCE the last edition of this work was published The Public Trustee Act, 1906, has come into operation, the Rules necessary for carrying the objects of the Act into effect have been made, a Public Trustee has been appointed, and his Department has been fully organised for the transaction of business.

So long as there have been trust funds to misappropriate, so long, no doubt, have there been instances of misappropriation by trustees, but, having regard to the number of trusts which now exist and to the vast number which have existed in the past, these instances have, it is believed, been comparatively rare, and by their very rarity bear testimony to the honour and integrity of those who now fill, and of those who in times gone by have filled, the difficult and far too often thankless office of trustee.

In recent years, however, the attention of the public has, by reports in the press, been called to several very flagrant cases of breaches of trust by trustees, or of misappropriation by those in whose hands trustees had incautiously and improperly left trust moneys for the purpose of investment; and the fear very naturally caused by these cases of malversation gave rise to a very strong desire on the part of those who were interested in trust property, and of those who were desirous of establishing trusts, either that some method should be found by which trustees might be brought more directly and immediately under the control of the Court or that a Government official available to undertake the duties of a private trustee should be appointed.

In furtherance of that object, after several Bills had been introduced into Parliament but without success, a Select Committee was in the year 1895 appointed "To enquire into the liabilities to which persons are exposed under the present law as to the administration of trusts, and whether any further legislative provision might be made for securing adequate administration of trusts without subjecting private trustees and executors to the risk which they now run." The Committee reported "that large sums of money were annually misappropriated by private trustees, and that much loss and consequent suffering is caused by this malversation, and that those who suffer are chiefly the poorer and more helpless."

The immediate result of the report of the Committee so appointed was the passing of The Judicial Trustees Act, 1896. That Act, however, has only been adopted to a very limited extent owing, probably, to it being necessary that all appointments under it should be made by the Court, to the somewhat cumbersome methods which have to be resorted to under it for controlling judicial trustees when appointed and securing the safety of the trust property, and, perhaps also, to the fact that the Court, under the powers given to it by the Act, usually assigns remuneration to the trustee.

The difficulty still remained that there was no public officer empowered to act as a private trustee who could be appointed in the ordinary way by those who were desirous of creating a trust, or by those who, having the power, were desirous of filling a vacancy which had occurred in the office of trustee. But in December, 1906, the Public Trustee Act was passed, and it came into operation on the 1st day of January, 1908.

The object of the Act is to afford, where advantage is taken of its provisions, security for trust properties against malversation and mismanagement, and for that purpose it has established the office of Public Trustee, and given facilities for the vesting of trust properties in the Public Trustee and for the appointment of such Trustee to act as the trustee or one of the trustees of any private trust, whether created before or after the Act came into operation, or to perform certain duties analogous to those of a trustee.

The Public Trustee, a statutory entity, is a corporation sole with perpetual succession and an official seal, and his powers and privileges, and the duties which he may undertake, are determined by the Act and the Rules made thereunder.

Fees are chargeable by the Public Trustee in respect of any duties which he may perform. Such fees, however, compare favourably with the fees charged by the numerous trust companies transacting trust business in the United States and in some of our Colonies, or by the Public Trustee of New Zealand, and are fixed on a scale framed with the sole view to cover the expenses incidental to the working of the Act, and not for the purposes of profit, and are so arranged as to fall in equitable proportion upon capital and income.

The Consolidated Fund of the United Kingdom is liable to make good all sums required to discharge any liability which the

Public Trustee, if he were a private trustee, would be personally liable to discharge, except where the liability is one to which neither the Public Trustee nor any of his officers has in any way contributed, and which neither he nor any of his officers could by the exercise of reasonable diligence have averted.

Subject to and in accordance with the provisions of the Act and the Rules made thereunder, the Public Trustee may, if he think fit:—

- (a) Act in the administration of Estates of Small Value.
- (b) Act as Custodian Trustee.
- (c) Act as an Ordinary Trustee.
- (d) Be appointed to be a Judicial Trustee.
- (e) Be appointed to be the Administrator of the Property of a Convict under The Forfeiture Act, 1870.

The Public Trustee may act either alone, or jointly with any person or body of persons in any capacity to which he may be appointed in pursuance of the Act, and will have all the same powers, duties, and liabilities, and be entitled to the same rights and immunities, and be subject to the control and orders of the Court, as if he were a private trustee acting in the same capacity, but he cannot accept any trust which involves the management or carrying on of any business except in the cases in which he is authorised by the Rules to do so; and he is absolutely debarred from accepting any trust under a deed of arrangement for the benefit of creditors, or under any instrument made solely by way of security for money, or the administration of any estate known or believed by him to be insolvent, and also from accepting any trust exclusively for religious or charitable purposes.

The Public Trustee has, moreover, a discretion to decline, either absolutely or except on conditions prescribed by the Rules, the acceptance of any trust to which he may be appointed, the only limit to such discretion being that he must not decline on the ground alone of the small value of the trust property.

The power of the Public Trustee to administer *Estates of Small Value* is confined to cases in which the gross capital value of the estate can, to the satisfaction of the Public Trustee, be proved to be less than one thousand pounds.

Application may be made to the Public Trustee to administer a small estate by any person who, in his opinion, would be entitled to apply to the Court for an Order for its administration; and the

Public Trustee, if it appears to him that the persons beneficially entitled are persons of small means, will, unless he sees good reason for refusing administration, undertake to administer the estate.

Provision is made by the Act for the vesting of the trust property in the Public Trustee on his undertaking to administer; and, for the purposes of the administration, the Public Trustee may exercise all the administrative powers exercisable by a Master of the Supreme Court acting in the administration of an estate, and may, in the manner prescribed by the Rules, take the opinion of the High Court on any question arising in the course of an administration without having recourse to judicial proceedings.

The Act also provides that where proceedings have been instituted in any Court for the administration of an estate, and by reason of the small value of the estate it appears to the Court that the estate can be more economically administered by the Public Trustee than by the Court, or that for any other reason it is expedient that the estate should be administered by the Public Trustee instead of by the Court, the Court may order the estate to be administered by the Public Trustee.

These powers of administration and of taking the opinion of the Court without judicial proceedings ought to prove of very great benefit to persons interested in small estates, for the costs of administration by the Public Trustee must prove to be considerably less than those which would be incurred in an administration by the Court, even where resort can be had to a County Court.

The office of *Custodian Trustee* is a new one created by the Act, and is not confined solely to the Public Trustee, for any incorporated Banking or Insurance or Guarantee or Trust Company or Friendly Society, and any such body corporate established for charitable or philanthropic purposes as may be approved by the Public Trustee and the Treasury may be appointed to the office, and will have power to charge and retain or pay out of the trust property fees not exceeding the fees chargeable by the Public Trustee as Custodian Trustee.

A Custodian Trustee may be appointed—

- (a) By order of the Court on the application of any person on whose application the Court may order the appointment of a new trustee; or
- (b) By the testator, settlor, or other creator of a trust; or
- (c) By the person having power to appoint new trustees

and the appointment may be made whether or not the number of trustees has been reduced below the original number.

The trust property is to be transferred to the Custodian Trustee as if he were sole trustee, and such trustee is to have the custody of all securities and documents of title relating to the trust property. But the management of the trust property and the exercise of any power or discretion exercisable by the trustees under the trust is to remain vested in the trustees other than the Custodian Trustee, and the Custodian Trustee is to concur in, and perform, all acts necessary to enable the managing trustees to exercise their powers of management or any other power or discretion vested in them (including the power to pay money or securities into Court) unless the matter in which he is requested to concur is a breach of trust, or involves a personal liability upon him in respect of calls or otherwise. All sums of money payable to or out of the income or capital of the trust property are, however, to be paid to or by the Custodian Trustee; but such Trustee may allow the dividends and other income derived from the trust property to be paid to the managing trustees or to such person as they direct, or into such bank to the credit of such person as they may direct.

The Act, by creating the office of *Custodian Trustee*, has introduced a new element into the law of trusts, for previously the fundamental rule was that the legal estate and ownership in the trust property should be vested in the trustee on whom had been imposed the duty of defending the legal title to such property as well as the duty of administering the trusts; but where a Custodian Trustee is appointed, the management of the trust property and the administration of the trust will be severed from the legal ownership, while, of course, the beneficial interest is vested in yet another person or set of persons.

The Custodian Trustee will, in fact, be an additional trustee appointed to watch over the trust property and to protect it from misappropriation or malversation by the ordinary trustees.

The appointment of a Custodian Trustee, however, whilst it admits that the acting trustees have administrative capacity, would certainly seem to impugn their integrity, and therefore where suspicion is entertained as to the honesty of a trustee, the better course, it is conceived, is to appoint, if possible, the Public Trustee to be an ordinary trustee of the trust, for an equal protection for the trust estate is thereby assured, and offence to the whole body of the trustees who, after all, may be acting in good faith, avoided.

Where the appointment of a Custodian Trustee is, however, resolved upon, it would, perhaps, be more expedient to appoint the Public Trustee to fill that office than to have recourse to a banking or insurance company or other approved corporate body; for where the Public Trustee is appointed the beneficiaries will have the security of the Consolidated Fund, whereas the security afforded by a company or other body corporate must always depend merely upon the honesty and good management of its officers.

The power given by the Act to the Public Trustee to *act as an ordinary trustee* extends to his acting in the office of executor or administrator; for the expression "trust" is defined by the Act as including an executorship or administratorship, and the expression "trustee" is to be construed accordingly, and by the Act and Rules the Public Trustee is empowered to accept by that name probates or letters of administration of any kind.

The Act, too, enables any executor who has obtained probate, or any administrator who has obtained letters of administration, and notwithstanding that he has acted in the administration of the deceased's estate, to transfer, with the sanction of the Court, and after such notice to the persons beneficially interested as the Court may direct, such estate to the Public Trustee for administration, either solely or jointly with the continuing executor or administrator, if any. And the Order of the Court sanctioning such transfer shall, subject to the provisions of the Act, give to the Public Trustee all the powers of such executor and administrator, and such executor and administrator shall not be in any way liable in respect of any act or default in reference to such estate subsequent to the date of such order, other than the act or default of himself or of persons other than himself for whose conduct he is in law responsible.

The Public Trustee may be appointed to be a trustee of any Will or Settlement or other instrument creating a trust, or to perform any trust or duty belonging to a class which he is authorised by the Rules to accept, and may be so appointed whether the Will or Settlement or instrument creating the trust or duty was made, or came into operation, before or after the passing of the Act, and either as an original or as a new trustee, or as an additional trustee, in the same cases and in the same manner and by the same persons or Court as if he were a private trustee, with this addition, that, though the trustees originally appointed were two or more, the Public Trustee may be appointed sole trustee.

And where the Public Trustee has been appointed a trustee of any trust, a co-trustee may retire from the trust under and in accordance with Section 11 of The Trustee Act, 1893, notwithstanding that there are not more than two trustees, and without such consents as are required by that section.

The Public Trustee cannot, however, be appointed either as a new or additional trustee where the Will, Settlement, or other instrument creating the trust or duty contains a direction to the contrary, unless the Court otherwise order.

A testator is often desirous of appointing his wife or some near relative to be an executor of his Will, and there can be no objection to such person being associated in the executorship with the Public Trustee who, in nearly every such case, will be the acting executor and responsible for the administration. In the case, however, of trusts, considered apart from the duties of an executor in winding up his testator's estate, it will, it is apprehended, be found not only safe but also preferable to appoint the Public Trustee alone without associating any other trustee or trustees with him—safe because the responsibility of the Public Trustee is guaranteed by the Consolidated Fund, and preferable because thereby avoiding the delays and inconveniences which might arise from any trustee appointed to act with the Public Trustee being out of the country or under incapacity.

The office of *Judicial Trustee* was established, as has already been mentioned, by The Judicial Trustees Act, 1896. That Act is embodied in this work and, with Notes on its several Sections, will be found at p. 261 *et seq.*, and the Rules made thereunder are contained in Appendix I.

The appointment of an *Administrator of the Property of a Convict under The Forfeiture Act, 1870*, rests with the Home Office. Application for the appointment of such an administrator may be made by any person interested.

The benefits offered by the Act to those interested in trust properties are obvious. The beneficiaries will, where the Act is taken advantage of and the Public Trustee appointed to act in the trust, have absolute security for their trust property, and, as the Public Trustee is a corporation sole with perpetual succession, there will be no need thereafter for the appointment of new trustees, and the trust estate will be relieved from expense and the beneficiaries from the ever-increasing difficulty of finding competent persons willing to act in the administration of the trust.

The power, too, which the Act confers on executors to transfer, with the sanction of the Court, the administration of an estate to the Public Trustee is a most useful one, for, independently of the Act, an executor, after probate, has, save where he can obtain the appointment of a Judicial Trustee to administer in his stead, no power to retire from his office and so to relieve himself from the responsibilities which he has undertaken.

It is true that where the provisions of the Act are resorted to fees are payable for the services of the Public Trustee, but such fees are, after all, but very moderate premiums for the insurance of the trust property against malversation.

Since the Act came into operation, trust business involving property of very considerable aggregate value has been entrusted to the Department of the Public Trustee. The Department is now self-supporting, and its operations are continually extending, so that the Act must be considered as having been successful in its object. The success attained by the Act is, no doubt, due to a large extent to the fact that it meets a want long felt by those interested in trusts and trust properties, but it may also fairly be said that such success is also due in part to the conduct and administration of the Department of the Public Trustee and to the assiduity and ability of the officials employed there.

There were, however, two difficulties which might *primâ facie* have seemed to stand in the way of the Public Trustee being employed to any great extent as an "ordinary trustee."

These difficulties are:—

First.—The doubt which beneficiaries and their advisers may, perhaps naturally, entertain as to whether the Public Trustee, the head of a Public Department, can in every case have that sufficient and intimate knowledge of the position of the beneficiaries and the circumstances of the trust without which proper administration is impossible, and as to whether the delays which too often attend the transaction of business in a Public Department will not be found to occur in the Department of the Public Trustee and prove to be a fruitful source of irritation and even occasion loss to the beneficiaries.

Secondly.—The feeling of apprehension which undoubtedly exists amongst solicitors lest, where a trust passes into the Department of the Public Trustee, the services of the solicitor who was previously concerned in the matter

should be dispensed with and the legal work connected with the trust go elsewhere, a feeling which, combined with a genuine doubt as to how far private trusts can be properly administered by a Public Trustee, might well make solicitors, who depend to a great extent upon work arising directly or indirectly out of trusts, and upon advising and acting for executors and administrators, hesitate before advising their clients to resort to the services of the Public Trustee.

But both these difficulties are, in fact, obviated by the course pursued by the Public Trustee, by the mode in which his Department is conducted, and by the terms of the Act itself.

To meet the first difficulty the Public Trustee in every case ascertains not only by inquiry, but where necessary by conference with the parties interested and their legal advisers, the position of the parties and all the circumstances a knowledge of which is essential if the matter under consideration is to be properly and effectually dealt with. And it will be found not only that the Public Trustee makes all possible promptitude the invariable rule, but his Department is easily accessible to all those having business with it, is unfettered by official red tape, and avoids formal applications and forms as far as possible.

The second difficulty is met, indeed, by the Act itself, which specifically provides (Section 11, Sub-section 2) that the Public Trustee may, subject to the Rules made under the Act, employ for the purposes of any trust such solicitors, bankers, accountants, and other persons as he may consider necessary, and that in determining the persons to be so employed in relation to any trust the Public Trustee shall have regard to the interests of the trust, but subject to this shall whenever practicable take into consideration the wishes of the creator of the trust, and of the other trustees (if any), and of the beneficiaries, either expressed or as implied by the practice of the creator of the trust or in the previous management of the trust.

And in accordance with the spirit and intention of the Act the Public Trustee in every case where a trust is transferred to his Department will, save where objection is raised by the beneficiaries, or, if the Public Trustee is not acting as sole trustee, by the other trustees, or where it would clearly be detrimental to the trust, continue to employ so far as may be in the legal business connected with the trust the solicitor who has previously acted in the matter.

And where the Public Trustee is appointed to act as executor or in the character of administrator he will, it is believed, employ, if possible, the solicitor, if any, who regularly acted for the testator or intestate in his lifetime.

So in the case of bankers, accountants, and other persons who have been employed in connection with an estate which passes into the Department of the Public Trustee it is not the practice of the Department to disturb, farther than may be actually necessary, the relations which previously existed between the settlor or testator and such persons.

The Public Trustee, bearing in mind that it is the duty of a trustee, both in investing trust moneys and in making the necessary variations in investments, to have regard not only to the interests of the tenant for life, but also to those of the persons entitled in remainder, so that the trust fund may, so far as possible, be kept intact for those who may ultimately become entitled to it, has established a separate section of his Department with the duty of examining the investments of each particular trust administered by the Department and of reporting to him thereon, so that he can guard against depreciation and any consequent loss to the trust fund and at the same time see that full justice is done to the tenant for life.

Subject to such information as may, under the Rules, be given to persons interested in the trust property with regard to the trust, the strictest secrecy is observed in the Department of the Public Trustee as to every trust or estate administered there, and those persons whose trust matters may be placed in the hands of the Public Trustee need, therefore, be under no apprehension that because they are dealing with a Public Department the details of their position and their family affairs will become exposed to the curious.

A. R. RUDALL.
J. W. GREIG.

3 NEW SQUARE, LINCOLN'S INN,
January, 1911.

ADDENDA.

Page 43, line 4, counting upwards. *In re Dover Coalfield Extension, Limited*, 1907, 2 Ch. 76. Reference may here be made to the case of *in re Lewis, Lewis & Lewis*, 1910, W. N. 217, a case where the same principle was applied. In that case a testator, who had died in 1905, had in his lifetime been a partner in a firm of G. I & Son, which consisted of himself and two other persons. The business of the partnership was the management of the properties of two colliery companies and the sale of the output of those collieries. For a number of years prior to the death of the testator his son, W. N. L., had been employed by the partnership as salesman at a salary of £600 a year. By his will the testator appointed W. N. L. one of his trustees, and in the same will, in pursuance of a power in that behalf in the partnership articles, he nominated him to succeed him in the partnership, but as a trustee. Since the death of the testator W. N. L. had acted as salesman for the partnership and had received his salary of £600 a year, and it had been agreed between him and his co-partners that he should continue so to act at that salary. The evidence showed that the agreement was absolutely *bona fide*, and that it was to the interest of the partnership that he should continue to act as salesman. An originating summons was taken out for the determination of the question (*inter alia*) whether W. N. L. was entitled to retain for his own benefit the £600 a year received by him from the partnership, or was bound to account for it as trustee to the testator's estate. Warrington, J., in deciding the question, stated that there was no authority precisely in point. The case which came nearest was *in re Dover Coalfield Extension, Limited*, and that case, though not on all fours with the one before him, supported the view which his Lordship took: viz.—that the salary resulted not from the trust, but from work done independently of the trust. His Lordship saw no reason in law or in good sense why W. N. L. should be compelled to perform gratuitously the services which he had rendered since the testator's death, or why he should not retain for his own benefit the salary to be paid him for his services in the future. W. N. L. was therefore under no liability to account to the testator's estate for the salary received by him.

Page 194, paragraph 1 (Note to Section 35, Sub-section 1 (ii.) (a)). The case of *in re Dehaynin* here referred to is now fully reported, 1910, 1 Ch. 223. In that case it was held by the Court of Appeal that where stock to which an infant was beneficially entitled had been invested in the joint names of himself and another person the Court had jurisdiction under Section 35, Sub-section ii. (a) of The Trustee Act, 1893, notwithstanding some slight difference in the language of this section and sub-sections as compared with Section 3 of The Trustee Extension Act, 1852, to make an order vesting the right to transfer such stock in the infant's guardian. And it was held by Farwell, L. J. "The words '(ii.) Where a trustee entitled alone or jointly with another person to stock or to a chose in action—(a) is an infant' apply to the case where one of the trustees is an infant and the stock is held in trust for the infant." And *in re Hirwood*, 20 Ch. D. 536, and *in re Barnett's Estate*, 1889, W. N. 216, were approved.

CORRIGENDA.

Page 38, line 17. For *in re* Smith, Smith *v.* Lewis, 1892, 2 Ch. 667, read *in re* Smith, Smith *v.* Lewis, 1902, 2 Ch. 667.

Page 43, line 4 from bottom of page. Read Dover Coalfield Extension, Limited, instead of Doves Coalfield Extension, Limited, and to the reference 1908, 1 Ch. 65.

Page 53, lines 22 and 39. For *in re* Tattersall, Topham *v.* Armitage, 1907, 2 Ch. 399, read *in re* Tattersall, Topham *v.* Armitage, 1906, 2 Ch. 399.

Page 63, line 40. For Rawstone *v.* Rowley, read Rawsthorne *v.* Rowley.

Page 105, line 9. For Cavendish *v.* Cavendish, 10 Ch. D. 319, read Cavendish *v.* Cavendish, L. R., 10 Ch. 319.

Page 143, line 34. For Tendring Hundred Waterworks Company *v.* James, read Tendring Hundred Waterworks Company *v.* Jones.

Page 155, line 10. For *re* Foster, 55 T. L. R., N. S. 479, read *re* Forster 55 L. T., N. S. 479.

Page 269, lines 1 and 2. For 1898, 1 Ch. 800 and 801, read 1899, 1 Ch. 800 and 801.

THE TRUSTEE ACT, 1888.

(51 & 52 VICTORIA, CHAPTER 59.)

An Act to Amend the Law relating to the Duties, Powers, and Liability of Trustees. [24th December, 1888.]

The only Sections of The Trustee Act, 1888 (51 & 52 Vict. c. 59), left unrepealed by The Trustee Act, 1893 (see Section 51), are Sections 1 and 8 given below. The repealed sections are replaced by various sections of The Trustee Act, 1893. Of The Trust Investment Act, 1889 (52 & 53 Vict. c. 32), only Sections 1 and 7 are left unrepealed (see pp. 29 and 30, *post*); these are dealt with in the notes to Section 1 of The Trustee Act, 1893 (*post*, p. 35 *et seq.*).

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by authority of the same, as follows: that it is to say—

1. (1) This Act may be cited as “The Trustee Act, 1888.”

Short title, extent, and definition.

(2) This Act shall not extend to Scotland.

(3) For the purposes of this Act the expression “trustee” shall be deemed to include an executor or administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee, but not the official trustee of charitable funds.

(4) The provisions of this Act relating to a trustee shall apply as well to several joint trustees as to a sole trustee.

Section 1.—The expression “Trustee” has for the purposes of the Act four meanings assigned to it: viz.—

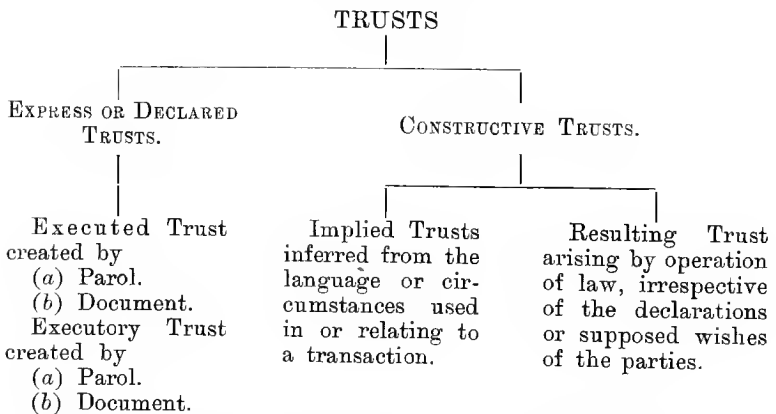
- (a) An Express Trustee.
- (b) A Constructive or Implied Trustee.
- (c) An Executor.
- (d) An Administrator.

All these persons will accordingly have the powers conferred and be entitled to the protection afforded by the Act, executors and administrators being, for that purpose, placed on the same footing as ordinary trustees.

A "Trust" is one of the most difficult technical terms in law to define. The most satisfactory one is "A trust is an equitable obligation, either expressly undertaken or constructively imposed by the Court, under which the obligor (who is called a trustee) is bound to deal with certain property over which he has control (and which is called the trust property) for the benefit of certain persons (who are called the beneficiaries or *cestuis que trust*), of whom he may or may not himself be one." (Underhill on *The Law of Trusts*). Trusts are either "express" or "constructive": the former are often called "declared" trusts and the latter "implied."

Again adopting the definition of the learned author just quoted, "A Declared or Express Trust" means a trust created by words either expressly or impliedly evincing an intention to create a trust." "A Constructive Trust" means a trust which is not created by any words either expressly or impliedly evincing a direct intention to create a trust."

The following Table may render the topic more intelligible:—



What is the exact meaning of "a trustee whose trust arises by construction or implication of law" has been the subject of much discussion and also of judicial interpretation. Mr. Lewin, in *On the Law of Trusts* (11th ed., p. 120, note (1)), says: "The terms 'Implied Trusts by Operation of Law' and 'Constructive Trusts' appear from the books to be almost synonymous expressions"; and the learned writer defines an Implied Trust as "one declared by a party not directly, but only by implication"; while Trusts by Operation of Law "are such as

are not declared by a party at all, either directly or indirectly, but result from the effect of a rule of equity"; and he divides them into (1) Resulting Trusts, as where an estate is devised to A. and his heirs upon trust to sell and pay the testator's debts, in which case the surplus of the beneficial interest is a resulting trust in favour of the testator's heir; and (2) Constructive Trusts, which are trusts the Court elicits by a construction put upon certain acts of parties, as when a tenant for life of leaseholds renews the lease on his own account, in which case the law gives the benefit of the renewed lease to those who were interested in the old lease. On the whole it is sounder not to sever "Implied Trusts" into "Resulting Trusts" and "Constructive Trusts," but to treat the term "Constructive" as equivalent to the general term "Implied" as in the definition above quoted. It seems clear, therefore, that the Act will apply, amongst other cases, to the following constructive trusts: namely—where a person holds property on a *precatory trust*; where a person agrees for valuable consideration to settle or sell a specified estate; where property, whether real (*Dyer v. Dyer*, White & Tudor's L. C. 203) or personal (*Elrand v. Dyer*, 2 Ch. Ca. 36), has been conveyed to others than, or jointly with, the person who has paid the purchase-money. As to what is a *precatory trust*, Underhill on *The Law of Trusts* defines it thus: "A gift to a person followed by precatory words expressive of the donor's request, recommendation, desire, hope, or confidence, that the property will be applied in favour of others; provided the property referred to be well defined and certain, and the context shows that the precatory expressions were intended to be imperative, and were not merely explanatory of the donor's motive or indicative of his expectations." Recent decisions as to what is an *express* or *constructive* trust are *Soar v. Ashwell* (1893, 2 Q. B. 393); *Warren v. Murray and Another* (1894, 2 Q. B. 648); and *Wassell v. Leggatt* (1896, 1 Ch. 554), a case of husband and wife; *Rochefoucauld v. Boustead* (1897, 1 Ch. 196).

In *re Lands Allotment Co.* (1894, 1 Ch. 616) directors of a company were held to be trustees whose trust arises "by construction or implication of law."

In *Soar v. Ashwell* is to be found an elaborate enumeration of the cases in which equity treated a person as an express trustee. Esher, M. R., at p. 394 of that case, says: "Where a person has assumed, with or without consent, to act as a trustee of money or other property, *i.e.* to act in a fiduciary capacity with regard to it, and has in consequence been in possession of or has exercised command or control over such money or property, a Court of Equity will impose upon him all the liabilities of an express trustee. . . . The principal liability of such a trustee is that he must discharge himself by accounting to his *cestuis que trust* for all such money or property without regard to lapse of time. There is another recognised state of circumstances in which a person not nominated a trustee may be bound to liability as if he were a nominated trustee, namely, where he

has knowingly assisted a nominated trustee in a fraudulent and dishonest disposition of the trust property."

At p. 400, Kay, J., says: "An express trustee, *primâ facie*, is a trustee appointed by the author of the trust, or under a power created by him, or by the Court under the Trustee Act." Further, he adds: "The authorities do not seem to have drawn with any precision the line of distinction between *express* and *constructive* trusts."

It is also clear that an agent with full and unrestricted powers of management is a trustee holding on an express trust, and as such debarred (prior to this Act) from setting up the Statute of Limitations (see *Soar v. Ashwell*, *ubi supra*, at p. 404). But "strangers are not to be made constructive trustees merely because they act as the agents of trustees in transactions within their legal powers, unless those agents receive or become chargeable with some part of the trust property, or unless they assist with knowledge in a dishonest or fraudulent design on the part of the trustees." "A stranger to the trust who receives the trust money with notice of the trust, or knowingly assists the actual trustee in a fraudulent and dishonest disposition of the trust property, is a *constructive* trustee."

This Act puts an end to the distinction drawn in equity between express and constructive trusts when applying the Statute of Limitations by analogy. Equity held that the former could not be barred, while the latter could (see *per* Bowen, L. J., in *Soar v. Ashwell*, 1893, 2 Q. B. 393 and 395). By virtue of this Act all trusts are put on the same footing, and will be barred after the lapse of the statutory period (see Section 8). If, however, there has been misappropriation or fraud the Statute of Limitations does not apply.

The Statute, it is apprehended, would now apply in such a case as *re Sharpe*, *Masonic and General Life Assurance Co. v. Sharpe* (1892, 1 Ch. 154, where directors paid interest *ultra vires* and were held liable, as trustees, to refund).

The position of directors of a company with regard to liabilities for acts performed in that capacity appears clearly from the following passages, which occur in the judgment of the Court of Appeal in *re Lands Allotment Co.* (*ubi supra*). Lindley, J.: "Although directors are not, properly speaking, trustees, yet they have always been considered and treated as trustees of money which comes into their hands or which is actually under their control, and ever since joint stock companies were invented directors have been held liable to make good moneys which they have misapplied, upon the same footing as if they were trustees. . . ." Kay, L. J.: "As directors they are not trustees at all. They are only trustees *quâ* the particular property which is put into their hands or under their control, and which they have applied in a manner which is beyond the powers of the company. I conceive that *quâ* such fund they are constructive trustees, or trustees by implication of law, and they

come exactly within the words of this definition in the Act, and therefore the Eighth Section of the Act, which applies to all persons who come within this definition of trustees, does apply to exonerate these directors from that misapplication of funds for which otherwise, I assume, they would have been liable." Shortly, the facts of the case were as follows. The directors of the Lands Allotment Co., which had no power to invest its capital in the shares of other companies, in March, 1885, accepted fully paid-up shares in the Building Securities Co. to the amount of £35,000 in discharge of a debt. This was referred to in the balance sheet of the Lands Allotment Co. as "Assets by the Building Securities Co.," and the entry was explained by the chairman at the general meeting in April, 1885, to mean that it represented the amount due from the Building Securities Co. for an estate purchased from the Lands Allotment Co. The same item was repeated in successive balance sheets till 1889. The investment was made without any fraudulent intent. The Lands Allotment Co. was wound up in 1893, and it was held that, assuming that the directors had been guilty of a breach of trust in investing the money in shares of the Building Securities Co., they were protected by the Statute of Limitations, and that there had been no such fraudulent concealment on their part, notwithstanding the false statement by the chairman at the meeting, to prevent time from running under the Statute. But directors are not trustees for individual shareholders, and may, for instance, purchase their shares without disclosing pending negotiations for the sale of the company's undertaking (*Percival v. Wright*, 1902, 2 Ch. 421). The position of directors *quâ* trustees has also been discussed in *Great Eastern Railway Co. v. Turner* (L. R., 8 Ch. 149, 152), and in *re Forest of Dean Coal Mining Co.* (1878, 10 Ch. D. 450, 453).

Time, for the purpose of the Statute of Limitations, and therefore of this Act, begins to run from the date of the commission of the act complained of (*Sovereign Assurance Society v. Eardley Wilmot*, 37 Sol. J. 581).

In *re Cornish* (1896, 1 Q. B. 90, affirming on appeal, 1895, 2 Q. B. 634) it has been decided that Section 8 of this Act either does not apply to a trustee in bankruptcy who is an officer of the Court, or that it does not operate to bar against such a trustee enforcement of an order to account. This case was cited without disapproval in *in re Gallard, ex parte Gallard* (1897, 2 Q. B., p. 8, at p. 11, and see also p. 14). See *per Esher, M. R.*, in *re Cornish (ubi supra*, pp. 101 and 102), where his lordship, referring to Section 8 (1) (b) of the Act, says, quoting the County Court Judge: "The object of Clause (b) in the Act of 1883 is to make him (the trustee) furnish such a statement as will enable it to be determined whether he is or is not an accountable party. When he has furnished the account it may be and it may not be that any claim against him to a balance of account is barred by a Statute of

Limitations. . . .” In my opinion the Trustee Act, when it speaks of trustees in general, has no application to a trustee in bankruptcy; and, even if it does apply, it can only do so when a claim is made upon the trustee for repayment of money; and no claim has as yet been made upon the appellant, except that he should give this account for the purpose of showing whether any further claim can be made upon him. See also *per Kay, J. (s.c.)*, at p. 104, where he explicitly states the Act has nothing to do with “an officer of the Court” who is required by the Court to account.

“Trustee,” by virtue of Sub-section 4, throughout the Act applies not only to a sole trustee, but also to two or more acting jointly in a trust. It should be noted that for the purposes of this Act (*i.e.* the protection afforded by it) “trustee” in it is to be deemed to include “an executor or administrator.” Strictly, an executor is not a trustee: or, to speak more correctly, he is not a “trustee *ab initio*,” though his duties may gradually slide into those of a trustee, *e.g.* where by a will the executor is appointed trustee to carry out trusts relating to the residuary property, when ascertained, or the trusts of any specific sum under the will.

“Official Trustee of Charitable Funds.”—As to the Official Trustee see Sections 15 and 18 of The Charitable Trusts Amendment Act, 1855 (18 & 19 Vict. c. 124), and Section 4 of The Charitable Trusts Act, 1887 (50 & 51 Vict. c. 49).

The Official Trustee is outside the purview of The Trustee Act, 1888.

Statute of
Limitations
may be
pleaded by
trustees.

8. (1) In any action or other proceeding against a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property, or the proceeds thereof, still retained by the trustee, or previously received by the trustee and converted to his use, the following provisions shall apply:—

- (a) All rights and privileges conferred by any Statute of Limitations shall be enjoyed in the like manner and to the like extent as they would have been

enjoyed in such action or other proceeding if the trustee or person claiming through him had not been a trustee or person claiming through him :

- (b) If the action or other proceeding is brought to recover money or other property, and is one to which no existing Statute of Limitations applies, the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead the lapse of time as a bar to such action or other proceeding in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received, but so nevertheless that the Statute shall run against a married woman entitled in possession for her separate use, whether with or without a restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary shall be an interest in possession.

(2) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought such action or other proceeding and this section had been pleaded.

(3) This section shall apply only to actions or other proceedings commenced after the First

day of January, One thousand eight hundred and ninety, and shall not deprive any executor or administrator of any right or defence to which he is entitled under any existing Statute of Limitations.

Section 8.—This section made a most important and much-needed alteration in the law. The effect is that, except in the three cases of *fraud* by a trustee, *retention of trust property* by him, or *receipt* by him and *conversion* of it to his own use, a trustee who has committed a breach of trust is entitled to the protection of the several Statutes of Limitations as if actions or proceedings for breaches of trust were enumerated in them (How v. Earl Winterton, 1896, 2 Ch. 626). Even if the breach of trust is not barred by lapse of time under this section, yet if the trustee has acted “honestly and reasonably, and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the Court in the matter in which he committed such breach,” the Court may now, under Section 3 of The Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), relieve him, either wholly or partly, from personal liability (see notes to Section 3 of that Statute, *post*).

Previous to the passing of The Trustee Act, 1888, the state of the law (apart from The Bankruptcy Act, 1883, referred to hereafter) as to how far the Statutes of Limitations applied to actions for breaches of trust was as follows:—

1. *As to Express Trusts.*—It is clear that they were not within the Statutes of Limitations. In *Petre v. Petre* (1 Drew. 393) the Vice-Chancellor of England said: “A person who is, under some instrument, an express trustee, or who derives title under such trustee, is precluded, how long soever he may have been in enjoyment of the property, from setting up the Statute.” In *Obee v. Bishop* (1 De G. F. & J. 137) Turner, L. J., said: “I am of opinion that it would be most dangerous to hold that a demand against the assets of a deceased trustee or personal representative, in respect of a breach of trust or misappropriation committed by him, is barred at the expiration of six years from his death.” This has been followed in many subsequent cases, and the Statutes have been held not to apply, even after very long periods of time have elapsed (see *Woodhouse v. Woodhouse*, L. R., 8 Eq. 514; *Butler v. Carter*, L. R., 5 Eq. 276; and *Edwards v. Warden*, 1 App. Ca. 281).

Any doubt on this point would be set at rest by Section 25, Sub-section 2, of The Judicature Act, 1873 (36 & 37 Vict. c. 66), which enacts that “no claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach

of such trust, shall be held to be barred by any Statute of Limitations." This only expressed what was the rule which was observed in Equity (Soar v. Ashwell, 1893, 2 Q. B., at p. 403; *in re Cross*, 20 Ch. D. 109, and *Rochefoucauld v. Boustead*, 1897, 1 Ch. 196; *Lyell v. Kennedy*, L. R., 14 App. Ca., p. 437. See pp. 454 and 457.)

This may at first sight appear to be inconsistent with Section 10 of The Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), which enacts that "after the commencement of this Act no action, suit, or other proceeding shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent, at law or in equity, and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trusts." But this is explained by the fact that that section applies as between land charged and the persons entitled to a charge, while the former applies to claims as between a *cestui que trust* and trustee (see *Fearnside v. Flint*, 22 Ch. D. 579; *Hughes v. Coles*, 27 Ch. D. 231).

The rule that the Statutes of Limitations did not apply to express trusts took no cognisance of the distinction between an *honest* and a *dishonest* breach of trust; it is on this distinction that the alteration in the law effected by the present Act hinges.

Section 25, Sub-section 2, of The Judicature Act, 1873, above cited, is, in effect, repealed by Section 8 of the present Act now under discussion so far as regards *innocent breaches* of trust untainted by fraud; but not in cases where the claim is to recover trust property still retained by the trustee or previously received and converted to his use by the trustee.

But even in cases of express trust, where there has been gross laches in bringing the action, and there is evidence of acquiescence on the part of the plaintiff, the Court would not, after the lapse of a long period (in the case next cited about twenty years), interfere on the plaintiff's behalf (*Bright v. Legerton*, 2 De G. F. & J. 606).

This doctrine of "laches," or "stale demand," was a deviation from the strict rule, but was uncertain in its operation and only applicable where the circumstances showed an intention or election on the part of the beneficiary not to exercise his strict rights. The defence of "laches" rests on the basis that the beneficiary against whom the defence is raised was at the time the claim arose cognisant of it, its nature and particulars, and has taken no steps to enforce his rights. Some cases have even gone to the length of applying the principle of *expedit reipublicae ut sit finis litium* to cases where the Court has held that it was for the general convenience that a suit should not be brought in respect of long dormant grievances. The doctrine of "laches" and its limits is discussed in *Erlanger v. New Sombrero Phosphate Co.* (3 App. Ca. 1218, p. 1279), and *Rochefoucauld v. Boustead* (1897, 1 Ch., at p. 210); and see the

remarks of Lindley, J., as to delay even in cases of express trust at p. 212 (citing *Bright v. Legerton*, 20 Ch. D. 109, and *in re Cross*, 2 De G. F. & J. 606).

2. *As to Implied or Constructive Trusts.*—It seems that in cases where there has been laches on the part of the plaintiff in bringing the action, or acquiescence, the Court would not readily interfere, though no strict rule has been laid down as to the exact length of time required to justify the Court in refusing its assistance (see *Kirkham v. Booth*, 11 Beav. 273; *Sleeman v. Wilson*, L. R., 13 Eq. 36: in each of which cases a period of about forty years had elapsed before the action was brought).

In *Townshend v. Townshend* (1 Bro. C. C. 550) Lord Commissioner Ashurst says: "Then as to trusts being an exception to the Statute of Limitations, the rule holds only as between trustees and *cestuis que trust*. It is true that a trustee cannot set it up against his *cestui que trust*, but this is merely the case [referring to the case he was hearing] of a trustee by implication, and as such affected by an equity; but that equity must be pursued within some reasonable time. Both Courts of Law and Equity preserve an analogy to the Statute of Limitations." Again, in *Beckford and Others v. Wade* (17 Ves. 87), the M. R. said: "It is certainly true that no time bars a direct trust as between a *cestui que trust* and trustee; but if it is meant to be asserted that a Court of Equity allows a man to make out a case of constructive trust at any distance of time after the facts and circumstances happened out of which it arises, I am not aware that there is any ground for a doctrine so fatal to the security of property as that would be; so far from it, that not only in circumstances where the length of time would render it extremely difficult to ascertain the true state of the fact, but where the true state of the fact is easily ascertained, and where it is perfectly clear that relief would originally have been given upon the ground of constructive trust, it is refused to the party who after long acquiescence comes into a Court of Equity to seek that relief."

The Statute would, by analogy, begin to run in these cases of constructive trust from the date of the discovery of the circumstances which constitute the right to relief.

Reference has been made above to The Bankruptcy Act, 1883, which, by permitting (Section 37, Sub-sections 1 and 3) liabilities for breaches of trust to be provable in bankruptcy, and by enacting (Section 30, Sub-section 2) that an order of discharge shall release the bankrupt from debts provable in bankruptcy other than (*inter alia*) debts or liabilities incurred by means of a fraudulent breach of trust, opened a method of escape, though not an inviting one, to trustees seeking to be relieved from long-standing liabilities arising from ordinary breaches of trust untainted by fraud.

As pointed out above in the note to Section 1 (*ante*, p. 4), the distinction drawn in equity between express and constructive trusts is no longer of importance in applying the Statutes of Limitations (see *Soar v. Ashwell*, 1893, 2 Q. B. 393, and *Warren v. Murray and Another*, 1894, 2 Q. B. 648) for the purposes of the protection afforded by the present Act, to a discussion of which attention will now be devoted.

Sub-section 1.—“*Action*” has probably a wider meaning than the technical one given it in The Judicature Act, 1873, Section 100, where it is defined as “a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of Court, and shall not include a criminal proceeding by the Crown.” Whatever it may mean is considerably widened by the addition in Section 8, Sub-section 1, of this Act of the “or other proceeding,” which would cover all civil and criminal proceedings.

The benefit of the Act is not personal to the trustee. It extends also to “*any person claiming through him.*” Thus his executors or administrators can, in an action brought to make his estate liable, plead the Statute, as they are persons “*claiming through him.*”

The section is intended to give trustees the benefit of the Statutes of Limitations, and it is clear from the decisions that the particular Statute of Limitations the protection of which will be chiefly invoked is 21 Jac. I. c. 16, which limits the period for bringing actions of debt to six years from the cause of action (see *How v. Earl Winterton*, 1896, 2 Ch. 626).

The Act has in no way altered the principles which determine the time at which a cause of action for breach of trust or concealed fraud accrues (*Thorne v. Heard and Marsh*, 1894, 1 Ch. 599). Time begins to run from the date of the breach of trust, as by making a wrong investment, not the date of the loss accruing from it (*re Bowden*, *Andrew v. Cooper*, 45 Ch. D. 444, and *re Somerset*, *Somerset v. Earl Poulett*, 1894, 1 Ch. 231). This is consonant with the principles applied under 21 Jac. I. c. 16 to actions for negligence, in which cases, the Statute being pleaded, it has been held that it runs from the time when the breach of duty is committed, and not from the time when the negligence was discovered or the consequential damage accrued (*Howell v. Young*, 5 B. & C. 259; *Smith v. Fox*, 6 Ha. 386).

In *Sovereign Assurance Society v. Eardley Wilmot* (37 Sol. J. 581) it was held that a winding up of a company does not revive or create any new liability as between the directors for acts done in the past and the liquidator, but that they are trustees *quâ* the company, and that the Statute will run as between them and the company as their *cestui que trust* from the period when the act complained of was done, and not from the time the liquidator was appointed.

As Section 8, Sub-section 1 (*b*), of this Act says that time is to be a bar, “in the like manner and to the like extent as if the

claim had been against him in an action of debt for money had and received," it is obvious that the Statute will have the same effect in a case of trust as in the case of an action for debt; hence, since it is clear that in the latter case the Statute does not extinguish the debt, but merely bars the remedy by action (*Curwen v. Milburn*, 42 Ch. D. 424), the rule will be the same in a case of breach of trust. It would seem, however, that the practical effect of this is not of importance, except so far as there may be acknowledgment, since an "acknowledgment" will take the case out of the protection of this Statute. By Lord Tenterden's Act (9 Geo. IV., Cap. 14, Sec. 1) "*acknowledgments*" must be in writing. Thus this Act merely dealt with the mode of proving acknowledgment, not with its effect. *Tanner v. Smart* (6 Barn. & Cress., p. 603) laid down that upon a general acknowledgment where nothing is said to prevent it, a general promise to pay may, and ought to be, implied, but where the party guards his acknowledgment and accompanies it with an express statement to prevent any such implication no such promise can be implied. Payment of interest by a mortgagor direct to a beneficiary, in respect of an advance which was a breach of trust, does not operate as an acknowledgment so as to take the case out of the operation of the Statute of Limitations, and deprive the trustee of its benefit. (*Somerset v. Earl Poulett*, 1894, 1 Ch. 231; see also *Morgan v. Rowlands*, L. R. 7 Q. B. 493). The scope and meaning of the protection afforded by the section of the Act now under discussion is dealt with by Farwell, L. J., in *in re Fountaine*, *in re Dowler*, *Fountaine v. Lord Amherst* (1909, 2 Ch. 383, see p. 395).

Certain cases are expressly excepted from the operation of the section (see Section 8, Sub-section 1)—

1. Where the claim is founded on any *fraud*.
2. Where the claim is founded on *fraudulent breach of trust* to which the trustee was party or privy.
3. Where the claim is to *recover trust property*, or the proceeds thereof, *still retained by the trustee*.
4. Where the claim is to *recover trust property*, or the proceeds thereof, *previously received by the trustee and converted to his use*.

To these may be added the modification created by the last clause of Sub-section 1 (b): namely—

5. The Statute shall not begin to run against any beneficiary unless and until the interest of such beneficiary shall be an interest in possession.

Exception 1.—*Where the Claim is founded on any Fraud*.—The Court, for obvious reasons, has always carefully refrained

from defining "fraud." Fraud on the part of a trustee of an express trust is a misdemeanour, and punishable under The Larceny Act, 1861 (24 & 25 Vict. c. 96, ss. 80 and 86, and see also Section 1 of that Act for the definition of "trustee"). The Larceny Act, 1901 (1 Edw. VII. c. 10), applying to the fraudulent misappropriation of property, excepts trustees on any express trust created by a deed or will. This Statute was passed to hit fraudulent misappropriation in cases, *inter alia*, of implied trust, cases of express trust being covered by Section 80 of The Larceny Act, 1861, just quoted.

The Sections of 24 & 25 Vict. c. 96, so far as material, applying to the point are as follows:—

Section 1.—The term trustee shall mean a trustee on some express trust created by some deed, will or instrument in writing, and shall include the heir, or personal representative, of any such trustee, and any other person upon or to whom the duty of such trust shall have devolved or come, and also an executor and administrator, and an official manager, assignee, liquidator, or other like officer acting under any present or future Act relating to joint stock companies, bankruptcy or insolvency.

Section 80.—Whosoever, being a trustee of any property for the use or benefit, either wholly or partially, of some other person, or for any public or charitable purpose, shall, with intent to defraud, convert or appropriate the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than such person as aforesaid, or for any purpose other than such public or charitable purpose as aforesaid, or otherwise dispose of or destroy such property or any part thereof, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to any of the punishments which the Court may award as hereinbefore last mentioned: Provided, that no proceeding or prosecution for any offence included in this section shall be commenced without the sanction of Her Majesty's Attorney-General, or, in case that office be vacant, of Her Majesty's Solicitor-General: Provided, also that where any civil proceeding shall have been taken against any person to whom the provisions of this section may apply, no person who shall have taken such civil proceeding shall commence any prosecution under this section without the sanction of the Court or Judge before whom such civil proceeding shall have been had or shall be pending.

Section 86.—Nothing in any of the last eleven preceding sections of this Act contained, nor any proceeding, conviction, or judgment to be had or taken thereon against any person under any of the said sections, shall prevent, lessen or impeach any remedy at law or in equity which any party aggrieved by any offence against any of the said sections might have had if this Act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him; and nothing in the said sections contained shall affect or prejudice any agreement entered into or security given by any trustee, having for its object the restoration or repayment of any trust property misappropriated.

The effect of the last paragraph of this enactment would appear to be to safeguard from invalidity such an agreement on the ground of its being a compounding of a misdemeanour.

Exception 2.—*Party or Privy.*—In *Thorne v. Heard and Marsh* (1894, 1 Ch. 599), Lindley, L. J., remarks that a person “who knows nothing of the fraudulent act of another, and in no way ratifies or benefits by it, and has no moral complicity with it,” cannot be said to be *party or privy* to it.

Exception 3.—*Where the Claim is to recover Trust Property or the proceeds thereof still retained by the Trustee.*—This exception prevents the Statute of Limitations applying to such a case as in *Soar v. Ashwell* (1893, 2 Q. B. 393). The meaning of the words “still retained” is discussed in *Thorne v. Heard and Marsh* (1894, 1 Ch. 599; affirmed 1895, App. Ca. 495). In the phrase “retained by the trustee, or previously received by him and converted to his use,” the Legislature has carefully used the word “retained” as meaning what it says: namely—Money which is not merely in the eye of the law in the hands of the trustee, because he has never paid it away to a person entitled to give a discharge, but money which is really in his pocket in the sense that it is invested in his name, or in land belonging to him, or in the name of some other person as trustee for him. In order to say it is “retained” the Court must be able to put its finger on the property or the proceeds, and say that it is still under the control of the trustees. The intention of this Statute was to give a trustee the benefit of the lapse of time when, although he had done something legally or technically wrong, he had done nothing morally wrong or dishonest, but it was not intended to protect him where, if he pleaded the Statute, he would come off with something he ought not to have: *i.e.* money of the trust received by him and converted to his own use. This exception applies and is confined to cases in

which at the date of the writ the trustee still retains—that is, has actually in his hands or under his control—the trust property, or the proceeds thereof, sought to be recovered (*Wassell v. Leggatt*, 1896, 1 Ch. 554). *In re Sharp, Rickett v. Rickett* (1906, 1 Ch. 793), is an application of this section to a case where annuities were paid in full by trustees without deducting income tax. Their liability was held limited to payments within six years, but the Act was held not to apply to the sum retained by the trustees (who were themselves annuitants) for their own annuities.

Exception 4.—*Where the Claim is to recover Trust Property or the proceeds thereof previously received by the Trustee and converted to his use.*—In *re Gurney, Mason v. Mercer* (1893, 1 Ch. 590), it was held that the application of trust funds to payment of a debt due to a bank in which the trustee is a partner does not exclude the Statute. The case of *Wassell v. Leggatt*, (1896, 1 Ch. 554) is a good example of the scope of this exception. There a woman, married in 1854, received in 1876 a legacy of £300 given her for her separate use, but was forcibly deprived of the money by her husband, who knew it was a legacy. During the husband's lifetime the wife frequently asked him for the money; but no proceedings to recover it were taken until after his death, which occurred in 1894. Romer, J., held the husband was affected with notice of the separate use, and was a trustee for the wife, and that the Statute of Limitations did not apply. In *North American Land and Timber Company, Limited v. Watkins* (1904, 1 Ch. 242; affirmed 1904, 2 Ch. 233), where moneys were remitted to an agent in America to purchase lands, it was held the defendant was an express trustee and that the Statute of Limitations did not bar the action. Bowen, J., in *Soar v. Ashwell*, says: "It has been established beyond doubt by authority binding on this Court that a person occupying a fiduciary relation, who has property deposited with him on the strength of such relation, is to be dealt with as an express and not merely a constructive trustee of such property. . . . He never can discharge himself except by restoring the property which he never has held otherwise than upon this confidence, and this confidence or trust imposes on him the liability of an express or direct trustee. The trustee in this case was ordered to account for the money received with interest at four pounds per centum per annum. On appeal the Court came to the conclusion the defendant was fraudulent, and therefore it was more evident the Statute of Limitations could not apply."

Exception 5.—If there be a gift to A. for life, remainder to B. for life, remainder to children of A., and in default to A. in fee, it would seem that if the Statute were a bar to an action by A.

while his life estate only was in possession, it would not necessarily bar an action after the fee in remainder had come into possession (see *re Somerset*, *Somerset v. Earl Poulett*, 1894, 1 Ch. 231). The case of *in re Fountaine*, *in re Dowler*, *Fountaine v. Lord Amherst* (1909, 2 Ch. 382), is a striking instance of this Statute being a bar to a life tenant's claim but not against the remainderman incidentally.

Sub-section 1 (a).—In *re Bowden*, *Andrew v. Cooper* (45 Ch. D. 444), which was an action against the executor of a deceased trustee in respect of investments negligently made, it was established that in cases of mere negligence Section 8 applied—Sub-section 1 (*b*) being the particular part which operated—and that none of the exceptions excluded the case from that operation.

Shortly, the case was as follows:—A newly appointed trustee of a will brought an action against an old trustee and the representatives of two deceased trustees to compel them to make good losses arising from investments negligently made on insufficient security more than six years before the action. It was held that Section 8, Sub-section 1 (*b*), applied. In this case a curious point was raised with reference to Section 8, Sub-section 1 (*a*), of the Act. It was said that that sub-section could not apply, for the action was one which could not be brought against anyone not a trustee; and Fry, J., in reference to this argument, said: “That was the sub-section relied on by the defendant; but I do not think that it can apply in this case. In the first place, it is obvious that if a person had not been a trustee he could not be sued for a breach of trust, and, further, that there is no right or privilege, that I am aware of, conferred by any Statute of Limitations in respect of a breach of trust.” If this view is correct Sub-section 1 (*a*) might as well have been left out of the Act.

Probably it was put in *ex majore cautelá*, but it was certainly not intended to be merely nugatory. This comment of Fry, J., is, it is submitted, a refinement in construing the Statute which might tend to destroy a useful legislative enactment. The sub-section in question evidently means that, assuming an action is brought against a trustee in that capacity, then he is to have the same protection from the Statute of Limitations (except in the cases excluded) as if he had not been a trustee. Thus, in an action for breach of trust by negligent investment (or, to put it shortly, an action for negligence) he can plead the Statute relating to limitations of actions for negligence as any other subject of the King might who is not a trustee, and this view has been adopted in the case, cited above, of *How v. Earl Winterton* (1896, 2 Ch. 626).

If, however, the view of Fry, J., is correct, it seems clear that this particular sub-section does not apply to an action against a trustee for breach of trust.

In *re Page*, *Jones v. Morgan* (1893, 1 Ch. 304), a trustee was sued for breach of trust in having expended the whole of a sum

payable to the plaintiff on attaining majority in educating and maintaining him during minority. Twelve years after coming of age the action was brought. The plaintiff did not allege that the defendant had been party or privy to any fraud or fraudulent breach of trust, and there was no evidence that he had converted any part of the fund to his own use, or that he had retained any part of it; but he admitted he had never rendered any account to the plaintiff. North, J., held that Section 8 of the Trustee Act applied, and dismissed the summons, but without costs.

Sub-section 1 (b).—“One to which no existing Statute of Limitations applies.”—“The Statute of 1888 is remedial, and intended to fill a gap; not to enact generally that a trustee may plead the Statute, but only that he may do so where previously it was impossible to plead it” (*in re Timmis, Nixon v. Smith*, 1902, 1 Ch. 184). This principle is of importance when the question is whether the action is against executors as such, or against them after the character of their duties has been changed by their having become trustees. Thus Section 8 of The Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), provides that no action shall be brought to recover any legacy but within twelve years after the present right to receive the same shall have accrued. If, then, the persons sued are executors, and they are sued in respect of a legacy, the Act of 1874 applies, and the period necessary to elapse before the action is barred is twelve years; but if they are sued as trustees, then the plaintiff may not be able to recover money from them, as the Statute of 1874 is inapplicable, and there being no other Statute of Limitations applicable the Statute of 1888 applies, and the plaintiff's right is barred under this Statute subject to the conditions in the section now under discussion mentioned. A striking instance of this distinction is the case of *in re Mackay, Mackay v. Gould* (1906, 1 Ch. 25).

In re Lacy, Royal General Theatrical Fund Association v. Kydd (1899, 2 Ch. 149), decides that an executor is not an express trustee for the purpose of The Real Property Limitation Act, 1874, and follows *in re Rowe* (1889, W. N. 161), and *in re Davis* (1891, 3 Ch. 119, 124). The principle is that “an executor was always considered, in a loose sense, a trustee for creditors and legatees, since he held the personal estate for their benefit and not for his own, but such a trust does not take a case out of the Statute.”

So, too, in *Dacre v. Patrickson* (1 Dr. & Sm. 182, 185) Kendersley, V.-C., says: “Strictly speaking, a trustee cannot have a trust imposed upon him *virtute officii* as executor. If a trust is imposed upon him, it is in another character: namely, that of trustee, whose duty it is to carry out the trust. *Quâ* executor he cannot have a trust imposed upon him by the will. The only trust of which he is capable as executor is the trust created by the law for the next-of-kin.”

Where this Statute has been pleaded the proper form of account against the executors, who set it up, is that framed in *How v. Earl Winterton* (1896, 2 Ch. 626), and sanctioned in *re Davies, Ellis v. Roberts* (1898, 2 Ch. 142), and is (subject to alterations necessitated by particular circumstances) in the following form:—

“And the defendant by his counsel admitting that on the 9th of August, 1889 [*six years before the issue of the writ*], there were moneys in his hands liable to the trust for accumulation by the will of the testatrix directed, this Court doth order that the following account be taken: that is to say—(1) An account of the moneys in the hands of the defendant on the 9th August, 1889, liable to the trusts for accumulation under the will of the testatrix, M. R., and of the rents and profits of the testatrix’s estate subsequently received by him in respect of the said term of fourteen years; but in ascertaining the actual amount of the moneys in the hands of the defendant on the date aforesaid, any payments made before that date are to be allowed to the defendant.

“Further consideration adjourned.

“Costs reserved.

“Liberty to apply.”

By enacting that where no existing Statute of Limitations applies “the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead the lapse of time as a bar to such action or other proceeding in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received,” the Act means, according to the cases which have been decided, that in all cases in future where a breach of trust has been committed without the elements of fraud or conversion of trust property, six years shall be the period after which the remedy is barred, and this is strictly in accordance with the words of the section, which make lapse of time a bar as if the claim had been made against the trustee “*in an action of debt for money had and received.*”

In re Somerset, Somerset v. Earl Poulett (1894, 1 Ch. 231), clearly decides that the effect of Section 8 is that any action or proceeding to recover money or other property from trustees (being one to which no Statute of Limitations existing at the passing of the Act applies) must be brought within six years from the time when the right of recovery accrued. In that case (August, 1878) the trustees of a settlement committed an innocent breach of trust by investing trust money upon mortgage of property

of insufficient value. The mortgagor paid the interest on the money advanced direct to the tenant for life until 1890. In 1892 the tenant for life and the infant remainderman brought an action against the trustees to compel them to make good the amount of the investment. It was held that the right of action of the *tenant for life* against the trustees was barred after six years from the time when the investment was made, and that although the payment of interest by the mortgagor direct to the tenant for life amounted in law to a payment by him to the trustees, and by them to the tenant for life, it was not an admission or acknowledgment which would take the case out of the Statute. See also *in re Fountaine*, *in re Dowler*, *Fountaine v. Lord Amherst* (1909, 2 Ch. 383).

This case is also an authority which shows that the Statute will not run against an infant beneficiary until he attains his majority.

In re Tucker, *Tucker v. Tucker* (1894, 1 Ch. 724 ; 1894, 3 Ch. 429), is a case showing that a partner in a firm may constructively become a trustee of moneys lent to the firm, and that payment of interest on the loan by the continuing partners may take the case out of the Statute, and so leave him liable to make good the breach committed by leaving the money with the firm after a change had taken place in its constitution. W. T., a member of a firm, was jointly and severally liable in a sum of money deposited with the firm by the trustees of a will. In 1883 W. T. retired from the firm, and a deed of dissolution was executed by which it was agreed that W. T.'s retirement should not be made known for a year, and that it should be then optional whether it should be gazetted ; that the continuing partners should take and collect all the assets, and pay all the debts and liabilities, and should indemnify W. T. against them, and should pay him a certain sum by instalments ; and that so long as any money remained due to him he should have power, on giving notice, to collect the debts due to the firm, and to re-enter on the premises and carry on the business himself. W. T.'s retirement was never gazetted, and the business was carried on in the old name of the firm. Down to 1891 interest on the loan was regularly paid to the testator's estate by cheques drawn in the name of the firm. The Court of Appeal held, as against W. T., that the debt was not barred by the Statute of Limitations, notwithstanding Section 14 of the Mercantile Law Amendment Act, for that, considering the terms of the deed of dissolution and the fact that the retirement of W. T. was kept secret, the payment of interest after his retirement by the continuing partners must be taken to have been made by them on his behalf and as his agents.

Of the cases decided before this Act showing when the Statute of Limitations would *not* apply, the following are important: *Wilson v. Moore* (1 M. & K. 337), merchants, by direction of an executor, applied moneys of which they knew he was trustee in discharge of his private debt to them. *Life Association of Scotland v. Siddal* (3 De G. F. & J. 58), a person who assumed to act as a trustee ;

Bridgman v. Gill (24 Beav. 302), bankers, parties to a breach of trust; *Lee v. Sankey* (L. R., 15 Eq. 204), solicitors, who had been employed by trustees of a will to receive proceeds of real estate; *in re Bell* (34 Ch. D. 462), a solicitor who acted for a mortgagee selling and retained the balance; *Barnes v. Addy* (L. R., 9 Ch. 244).

“*The Statute . . . shall not begin to run against any beneficiary unless and until the interest of such beneficiary shall be an interest in possession.*—In *Mara v. Browne* (1895, 2 Ch. 69) it was held that a life estate by implication was given to a married woman, which came into effect on the death of her husband. He died in 1885. In 1890 she brought an action complaining of a breach of trust, and it was held that, even though the action might have been barred in respect of a joint interest which she had with her husband, it was not barred in respect of the implied life estate, which came into possession in 1885.

The true construction of this sub-section is to put all breaches of trust, whether creating a simple contract liability or one of the nature of a debt due by specialty, on the same footing, and to make the period of six years apply to both kinds of liability to such actions. In the words of the section “no existing Statute of Limitations applies,” and these breaches of trust would *primâ facie* appear to come within this sub-section.

As has been observed, Sub-section 1 (b) is, pending a decision on Sub-section 1 (a), the effective enactment in this section. With reference to its operation, the case of *Moore v. Knight* (1891, 1 Ch. 547) shows that the principle established by the case of *Blair v. Bromley* (2 Ph. 354; 5 Ha. 542) (that a representation by one partner binds the other partner) is not affected in any way by the section in question. The case, shortly, was as follows:—Between the years 1867 and 1874 the plaintiff deposited divers sums of money with Messrs. M. G. & B., a firm of solicitors, for the purpose of investment. Representations were from time to time made to the plaintiff, on behalf of the firm, that her money had been duly invested, and interest was paid to her by Messrs. M. G. & B. down to the death of G. in 1877, and by the surviving members of the firm down to 1886. In 1886 it was discovered that the plaintiff’s money had never, except as to one small sum, been invested, but had, in fact, been embezzled by a clerk of the firm. An action was brought by the plaintiff after the death of all the partners for the recovery of her money, and G.’s executors pleaded the Statute of Limitations and The Trustee Act, 1888, and contended that this Act had rendered the decision in *Blair v. Bromley* no longer applicable; but it was held that the plaintiff could recover.

In *Thorne v. Heard and Marsh* (1894, 1 Ch. 599) *Blair v. Bromley* was distinguished, and the Statute held to apply. In this case the defendants, the first mortgagees of property, in 1878 sold under their power of sale, and employed S., a solicitor,

to conduct the sale for them. S. received the sale moneys, and, after satisfying the defendants' mortgage debt, retained the surplus sale moneys, falsely representing to the defendants that he, S., had the authority of the plaintiff, the second mortgagee, to receive the same. S. applied the surplus to his own use, and until March, 1891, concealed his fraud by continuing to pay the plaintiff interest on the second mortgage as though it were still existing. In February, 1892, S. became bankrupt, when the true facts were discovered: whereupon the plaintiff brought an action against the defendants for an account of the sale moneys, and payment of what was due to him on his second mortgage. It was held that the plaintiff's claim was barred by the Statute of Limitations and the Trustee Act, on the ground that his cause of action first accrued in 1878, when the defendants committed an innocent breach of trust in allowing S. to receive the surplus sale moneys instead of handing them over to the plaintiff, and not in 1892, when the plaintiff discovered S.'s fraud; and that the defendants were not liable under the exception in Section 8 either as having been "party or privy" to the fraud of S., or as having "still retained" the money sought to be recovered, the money not having been actually in their hands or under their control at the commencement of the action. Stirling, J. (p. 555), says: "It appears, therefore, that the money came into the hands of the firm of Messrs. Bromley without fraud, and that one of the firm afterwards committed a fraud in respect of it, but made misrepresentations (some of which were attributable to the firm), which prevented the fraud from being discovered until the period fixed by the Statute of Limitations had expired. It was held that the innocent partner was deprived of the benefit of the Statute by those representations, which bound him as a partner. The decision rests on principles of the law relating to representation and to partnership, not on those which relate to trusts; and in my opinion those principles are unaffected by the provisions of The Trustee Act, 1888."

In re Swain, Swain v. Bridgman (1891, 3 Ch. 233), is another case on Sub-section 1 (b). In that case, instead of realising the testator's residuary personal estate, the trustees, at the instance of the widow, in breach of trust allowed her and her children to live at the farm which the testator had occupied, and the trustees and the survivors of them carried on the farm, by the profits of which the widow and children were maintained, and the children were educated. The action was to render the surviving trustee liable to make good to the testator's estate an alleged loss of £1,822 3s. 3d. by the delay in realising his residuary personal estate, and by employing his assets in the farming business. It was held that Section 8 applied.

In *Robinson v. Harkin* (1896, 2 Ch. 415) it was laid down that the principle established in *Wolmershausen v. Gullick* (1893,

2 Ch. 514), that the Statute of Limitations does not begin to run against a surety suing a co-surety for contribution until the liability of the surety is established, applies equally to the case of a trustee claiming contribution against his co-trustee in respect of a liability incurred from loss occasioned to the trust estate by their joint default. In such a case, therefore, time does not begin to run as between the co-trustees until the claim of the *cestui que trust* has been established against one of them.

In this connection the case of *Edwards v. Hood Bars* (1905, 1 Ch. 20) is of importance, as it decides that where in an action against trustees for breach of trust a sum is certified to be due from the defendants to the plaintiff, the acceptance by the plaintiff of a payment by one trustee by way of compromise in discharge of his liability does not operate as a release *pro tanto* of the others, consequently the plaintiff may prove in the bankruptcy of another trustee for the full amount of the certified debt without giving credit for the compromise.

Reference may also be made to the cases which are cited above: *In re Bowden, Andrew v. Cooper* (45 Ch. D. 451), and *in re Page, Jones v. Morgan* (1893, 1 Ch. 304).

Time is by this Act, in cases coming within Section 8, Sub-section (b)—*i.e.* where the statutory period which bars an action for debt for money had and received is applicable—to run even against a married woman, whether restrained from anticipation or not, provided she is entitled in possession. This is a deviation from Section 7 of 21 Jac. I. c. 16, which treats coverture as a disability.

Sub-section 2.—In effect this sub-section allows the Statute to be pleaded as against one or more beneficiaries, though the trustees may remain liable to another beneficiary or other beneficiaries for reconping to him or them his or their own share of the trust fund.

Sub-section 3.—Section 8 is only applicable to actions or other proceedings commenced after the 1st of January, 1890, though the trust may itself have been created before that date, and operates so as not to “deprive any executor or administrator of any right or defence to which he is entitled under any existing Statute of Limitations.”

In *re Harrison, Allen v. Cort* (1892, W. N. 148), it was decided that this section had no application as against persons who have been served with a decree for general administration pronounced after the 1st of January, 1890, in an action which had been commenced before that date.

To sum up, and stated briefly, the law as it now stands under this Act is as follows:—

1. The Statute of Limitations runs in favour of a trustee who has committed an innocent breach of trust.

2. It is immaterial whether the breach be known to the beneficiary or not, but the beneficiary's interest must be one in possession for the Statute to run against him or her.
3. The Statute is not prevented from running by payment of interest.
4. Fraud or fraudulent breach of trust to take the case out of the Statute must be such that the trustee was party or privy to it.
5. Fraud by an agent of a trustee will not prevent the Statute from running, if the trustee be not party or privy to it.
6. "Trust property still retained" means property physically in the trustee's possession or under his control.

"*Shall not deprive any executor or administrator of any right or defence to which he is entitled under any existing Statute of Limitations.*"—This, in the case of an administrator, refers to Section 13 of The Law of Property Amendment Act, 1860, commented on below (see p. 27).

Order XIX., Rule 15, of the Rules of the Supreme Court deals with the rules of pleading relating to pleading the Statute of Limitations. The Statute, when it is to be relied on, should be specifically pleaded (*Clarke v. Callow*, 46 L. J., Q. B. 53; *Olley v. Fisher*, 34 Ch. D. 367); but it is not necessary to plead the particular section. If it be sought to exclude the operation of the Statute on the ground of concealed fraud, the utmost particularity is required.

It may be useful to give here the provisions of certain other Acts as to the limitation of proceedings relating to trusts, and which provisions, being untouched and unrepealed by this Act or by The Trustee Act, 1893, have a bearing on the section of the Act of 1888 now under discussion.

By Section 25 of 3 & 4 Will. IV. c. 27 it is enacted: "*Where any land or rent within the meaning of any Statute of Limitations is vested in a trustee on an express trust, the right of the beneficiary, or any person claiming through him, to bring an action against the trustee, or any person claiming through him, to recover the land or rent, shall be deemed to have first accrued, according to the meaning of any Statute of Limitations, at and not before the time at which the land or rent has been conveyed to the purchaser for a valuable consideration, and shall then be deemed to have accrued only as against that purchaser and any person claiming through him.*"

Section 13 of 23 & 24 Vict. c. 38 enacts that "*No suit or other proceedings shall be brought to recover the personal estate, or any share of the personal estate, of any person dying intestate, possessed by the legal personal representative of such intestate, but within twenty years next after a present right to receive the same shall have accrued*

to some person capable of giving a discharge for or release of the same, unless, in the meantime, some part of such estate or share, or some interest in respect thereof shall have been accounted for or paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person accountable for the same, or his agent, to the person entitled thereto, or his agent; and in such case no such action or suit shall be brought, but within twenty years after such accounting, payment, or acknowledgment, or the last of such accountings, payments, or acknowledgments, if more than one was made or given."

By Section 25, Sub-section 2, of 36 & 37 Vict. c. 66, and Section 28, Sub-section 2, of 40 & 41 Vict. c. 57, it is enacted that "*no claim of a cestui que trust against his trustee for any property held on an express trust or in respect of any breach of trust shall be held to be barred by any Statute of Limitations."*

Section 8 of 37 & 38 Vict. c. 57—

Money charged upon land and legacies to be deemed satisfied at the end of twelve years if no interest paid nor acknowledgment given in writing in the meantime.

"No action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within twelve years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto, or his agent; and in such case no such action or suit or proceeding shall be brought but within twelve years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one was given."

Section 10 of 37 & 38 Vict. c. 57 enacts that "*no action or other proceeding shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trusts."*

Section 28 of 40 & 41 Vict. c. 57 (Supreme Court of Judicature in Ireland) is "No claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations."

With regard to Section 25 of 3 & 4 Will. IV. c. 27 (The Real Property Limitation Act, 1833) it is to be observed that the section applies to any "*land*" or "*rent*" vested on "*any express trust,*"

and runs only in favour of a purchaser for valuable consideration, or any person claiming under him. The section is not for the protection of a trustee who may have been in possession of the property, but of a purchaser from him. As from that purchaser the property can only be recovered within such period as the law may lay down, calculated from the period of accruer of the right to bring the action. The section, in addition to enacting who may benefit by the limitation of time, defines when the right to bring the action which is to be barred shall be deemed to have accrued. Time actually begins to run as against a *cestui que trust* from the moment when a conveyance to a *bonâ fide* purchaser for value has taken place (*Petre v. Petre*, 1 Drew. 371).

It would therefore appear that, as between the trustee and *cestui que trust*, nothing in the present Act affects the operations of this section (Section 25 of 3 & 4 Will. IV c. 27), for that section operates only from the time of a conveyance for valuable conveyance, since the person to benefit by the lapse of time is to be a "*bonâ fide* purchaser for value." Up to that instant of time the property would be "still retained by the trustee" within the exception in Section 8, Sub-section 1, of The Trustee Act, 1888, and so the Statute would not run against the *cestui que trust*. It is also clear that Section 25 of The Real Property Limitation Act, 1833, would not bar a claim against a *volunteer* claiming under the trustee (*Sturgis v. Morse*, 24 Beav. 541). A lease is treated as being a conveyance for value (*Attorney-General v. Davey*, 4 De G. & J. 136; *Attorney-General v. Payne*, 27 Beav. 168).

But time will not run under this section against a *cestui que trust* if the latter's rights are reversionary, or he is an infant (*Thompson v. Simpson*, 1 Dru. & W. 489; *A.-G. v. Magdalen College*, 6 H. L. C. 215).

It makes no difference that the purchasers have notice of the trust (see *A.-G. v. Magdalen College*, 6 H. L. C. 189).

Charities are within the scope of this Act, and will be barred by lapse of time.

It is clear from the cases decided on Section 25 of The Real Property Limitation Act, 1833, that "express trust" means a trust expressly declared by some deed, will, or other document, and does not include what are known as "constructive trusts" (*Petre v. Petre*, 1 Drew, 393).

As to who are express trustees within the meaning of the section the following cases may be consulted:—

A trustee *de son tort*, where there were express trusts (*Life Association of Scotland v. Siddall*, 3 De G. F. & J. 58), was held to be a trustee.

A trust for sale of land by way of security for money is not an express trust (*Locking v. Parker*, L. R., 8 Ch. 30).

An assignee in bankruptcy who has taken a conveyance of the legal estate upon trust for creditors is a trustee within the section (*Sturgis v. Morse*, 3 De G. & J. 1, on appeal from 24 Beav. 541).

In *Dawkins v. Penrhyn* (4 App. Ca. 51) a devise to a person and his heirs male "in fullest trust and confidence" that he would not do, nor permit to be done, "any act in law or otherwise" to defeat the declared trusts, was held not to create a trust.

In *re Alison, Johnson v. Mounsey* (11 Ch. D. 284), *Locking v. Parker* was explained, and it was decided that in a mortgage containing a trust for sale such trust could not be executed after twenty years' possession by the mortgagee in whose favour the Statute would then have run. The mortgagee could only convey as owner in fee.

In *Patrick v. Simpson* (24 Q. B. D. 128) it was held there was an express trust for an heir at law, the executor taking as devisee in trust.

In *re Bell, Lake v. Bell* (34 Ch. D. 462), was the case of a sale by a mortgagee, the moneys being retained by the solicitor who acted, who was held a trustee, following *Burdick v. Garrick* (L. R., 5 Ch. 233).

In *Dickinson v. Teasdale* (1 De G. J. & S. 59) the class of trust to which this section refers is clearly pointed out.

Although the trust must be an express one, the actual word need not be used (*Commissioners of Charitable Donations v. Wybrants*, 2 Jon. & Lat. 197). But so long as the words used naturally give rise to a trust, that is an "express trust" within the section.

The most useful case on this point is *Patrick v. Simpson* (24 Q. B. D. 128), following exactly *Salter v. Cavanagh* (1 Dr. & Wal. 668), and distinguishable from *Churcher v. Martin* (42 Ch. D. 312) on the ground that the deed in that case, which conveyed the land to the trustees, was void under the Mortmain Act. In *Mutlow v. Bigg* (L. R., 18 Eq. 246), where there was a devise of land upon trust for sale, the proceeds to be considered as part of the personal estate, and the trustees allowed part of the land to remain unsold for fifty years, it was held that the trust was an express one within the section in the former Statute similar to this one, and a decree for the execution of the trust of the unsold land was made at the suit of a residuary legatee. This case was reversed upon further evidence in the Court above, but the point decided is not affected.

Putting the matter shortly, it will appear that what is an "express trust" is a question to be decided with reference to this

particular Statute, and is not to be determined by reference to the general distinctions drawn in Courts of Equity between trusts as express, implied, constructive, or otherwise.

With reference to the point whether time runs as against persons under disability, the result of the cases appears to be that time begins to run from the date of the estate falling into possession or the disability coming to an end (*Thompson v. Simpson*, 1 Dru. & War. 489; *Attorney-General v. Magdalen College*, 18 Beav. 239; *Life Association of Scotland v. Siddall*, 3 De G. F. & J. 58; *Shaw v. Keighron*, 3 Ir. Eq. R. 574; *Butler v. Carter*, L. R., 5 Eq. 276; *Quinton v. Firth*, 2 Ir. Eq. R. 396).

Section 13 of The Law of Property Amendment Act, 1860 (23 & 24 Vict. c. 38).—This enactment has been judicially considered in *re Johnson*, *Sly v. Blake* (29 Ch. D. 964), which decides that a claim by next-of-kin for general administration of the estate of an intestate who died in 1848 was barred at the end of twenty-one years from that date (see also *in re Lacy*, *Royal General Theatrical Fund Association v. Kydd*, 1899, 2 Ch. 149; and *Kirkland v. Peatfield*, 1903, A. C. 756).

With regard to Section 25, Sub-section 2, of 36 & 37 Vict. c. 66, as remarked, it appears to be in direct conflict with the provisions of Section 8 of The Trustee Act, 1888, which would no doubt prevail as a later enactment. Indeed, in none of the cases decided on that Act since it was passed has it been contended that Section 25 of 36 and 37 Vict. c. 66 still continues to govern cases.

Of this Section 25, *Baggallay, L. J.*, in *in re Cross* (20 Ch. D. 109), says it is "but a statutory declaration of a law which had always been recognised and administered in Courts of Equity."

Section 8 of 37 & 38 Vict. c. 57.—It has been held that a suit to recover a legacy from an executor is within Section 8 of 37 & 38 Vict. c. 57, unless the legacy is vested in him on express trusts, and that a mere constructive trust will not prevent the Statute from being a bar.

In the absence of special circumstances executors are not regarded as express trustees (*in re Lacy*, *Royal General Theatrical Fund Association v. Kydd*, 1899, 2 Ch. 149).

A trust for sale and conversion is not an express trust within this Act (*in re Barker*, 1892, 2 Ch. 491).

In re Mackay, *Mackay v. Gould* (1906, 1 Ch. 25), there will be found a valuable discussion on the position of an executor as regards the residue and as to whether he becomes a trustee of it (see p. 6, and compare *in re Rowe*, 58 L. J., Ch. 703), where the Court declined to hold that the signing of the residuary account by the executor constituted the executor a trustee for the residuary legatee or amounted to a declaration of trust. *In re Davis* (1891, 3 Ch. 119) shows clearly that an executor will not become a trustee of a legacy unless the legacy is vested in him on express trusts.

The only effect of Section 8 of The Real Property Limitation Act, 1874, is to bar the right of a mortgagee to bring an action to recover the money charged on land after the lapse of twelve years; this does not affect his title where the subject-matter of the mortgage is proceeds of sale of land (*In re Hazeldine's Trusts*, 1907, 1 Ch. 686).

As to Section 10 of 37 & 38 Vict. c. 57, set out above, it is clear a charge would not, in the absence of this section, have been a trust within Section 25, Sub-section 2, of 36 & 37 Vict. c. 66, as Section 40 of 3 & 4 Will. IV. c. 27 specially dealt with such charges, and under it twenty years was the period of limitation; but Section 10 of 37 & 38 Vict. c. 57 places charges, whether secured by a trust or not, on the same footing, and they are thus barred at the end of twelve years.

But cases may occur where, though in form a charge, there is really a trust, as in the cases of *Commissioners of Charitable Donations v. Wybrants* (2 Jon. & Lat. 182) and *Hunt v. Bateman* (10 Ir. Eq. R. 360). These cases would now, it is apprehended, fall under Section 8 of The Trustee Act, 1888.

Fraudulent Preference.—A trustee who has committed breaches of trust and is insolvent, and on the eve of his bankruptcy conveys an estate to make good the breaches of trust, without any pressure or request by his *cestui que trust*, has not made a fraudulent preference within Section 48 of The Bankruptcy Act, 1883 (*Sharp v. Jackson & Others*, 1899, A. C. 419; *re Lake, ex parte Dyer*, 1901, 1 K. B. 710).

THE TRUST INVESTMENT ACT, 1889.

(52 & 53 VICTORIA, CHAPTER 32.)

**An Act to Amend the Law relating to the Investment
of Trust Funds. [12th August, 1889.]**

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as “The Trust Short title.
Investment Act, 1889.”

7. Where the council of any county or borough or any urban or rural sanitary authority are authorised or required to invest any money for the purpose of a loans fund or a sinking fund, any enactment relating to such investment shall be modified so far as to allow such money to be invested in any of the stocks, funds, shares, or securities in which trustees are authorised by this Act to invest, except that such council or authority shall not by virtue of this section invest in any stocks, funds, shares, or securities issued or created by themselves, nor in real or heritable securities. Investment of sinking fund by local authorities.

Provided that it shall not be lawful for any such council or authority to retain any securities which are liable to be redeemed at a fixed time at par or at any other fixed rate, and are at a price exceeding their redemption value, unless more than fifteen years will elapse before the time fixed for redemption.

The whole of The Trust Investment Act, 1889, with the exception of Sections 1 and 7, given above, is repealed by The Trustee Act, 1893 (see Section 51 and Schedule). With regard to these unrepealed sections see the notes to Section 1 of The Trustee Act, 1893 (post, p. 47).

THE TRUSTEE ACT, 1893.

(56 & 57 VICTORIA, CHAPTER 53.)

An Act to Consolidate Enactments relating to Trustees.

[22nd September, 1893.]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

INVESTMENTS.

1. A trustee may, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following: that is to say—

Authorised
invest-
ments.

- (a) In any of the Parliamentary stocks or public funds or Government securities of the United Kingdom:
- (b) On real or heritable securities in Great Britain or Ireland:
- (c) In the stock of the Bank of England or the Bank of Ireland:
- (d) In India Three-and-a-half per cent. stock and India Three per cent. stock, or in

any other capital stock which may at any time hereafter be issued by the Secretary of State in Council of India under the authority of Act of Parliament, and charged on the revenues of India :

- (e) In any securities the interest of which is for the time being guaranteed by Parliament :
- (f) In consolidated stock created by the Metropolitan Board of Works or by the London County Council, or in debenture stock created by the Receiver for the Metropolitan Police District :
- (g) In the debenture or rentcharge or guaranteed or preference stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than three per centum per annum on its ordinary stock :
- (h) In the stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity or for a term of not less than two hundred years at a fixed rental to any such railway company as is mentioned in Sub-section (g), either alone or jointly with any other railway company :

- (i) In the debenture stock of any railway company in India the interest on which is paid or guaranteed by the Secretary of State in Council of India :
- (j) In the "B" annuities of the Eastern Bengal, the East Indian, and the Scinde Punjab and Delhi Railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway ; also in deferred annuities comprised in the register of holders of annuity Class D, and annuities comprised in the register of annuitants Class C, of the East Indian Railway Company :
- (k) In the stock of any railway company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed :
- (l) In the debenture or guaranteed or preference stock of any Company in Great Britain or Ireland, established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before

the date of investment paid a dividend of not less than five pounds per centum on its ordinary stock :

- (m) In nominal or inscribed stock issued, or to be issued, by the corporation of any municipal borough having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, or by any county council under the authority of any Act of Parliament or Provisional Order :
- (n) In nominal or inscribed stock issued, or to be issued, by any commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that during each of the ten years last past before the date of investment the rates levied by such commissioners shall not have exceeded eighty per centum of the amount authorised by law to be levied :
- (o) In any of the stocks, funds, or securities for the time being authorised for the investment of cash under the control or subject to the order of the High Court,

and may also from time to time vary any such investment.

Section 1.—Section 2 of The Colonial Stock Act, 1900 (63 & 64 Vict. c. 62), further provides that—

2. The securities in which a trustee may invest under the powers of The Trustee Act, 1893, shall include any colonial stock which is registered in the United Kingdom in accordance with the provisions of The Colonial Stock Acts, 1877 and 1892, as amended by this Act, and with respect to which there have been observed such conditions (if any) as the Treasury may, by order notified in the *London Gazette*, prescribe.

The restrictions mentioned in Section 2, Sub-section 2, of The Trustee Act, 1893, with respect to the stocks therein referred to, shall apply to colonial stock. The Treasury shall keep a list of any colonial stocks in respect of which the provisions of this Act are for the time being complied with, and shall publish the list in the *London* and *Edinburgh Gazettes*, and in such other manner as may give the public full information on the subject.

And by Section 17, Sub-sections 1 and 4, of The Metropolis Water Act, 1902 (2 Edw. VII. c. 41), it is provided that water stock issued by the Metropolitan Water Board under the powers conferred by the Act shall be included amongst the securities in which a trustee may invest under The Trustee Act, 1893.

Section 1 of The Trustee Act, 1893, substantially replaces Section 3 of The Trust Investment Act, 1889 (52 & 53 Vict. c. 32), the whole of which Statute, with the exception of Sections 1 and 7, is repealed by the present Act (see Section 51 and the Schedule).

This section applies as well to trusts created before as to trusts created after the passing of the Act, and the powers conferred are in addition to the powers conferred by the instrument (if any) creating the trust (see Section 4, *post*, p. 51).

The case of there being no instrument creating the trust is expressly contemplated by this section, and it is conceived that the word "trustee" includes not only an express trustee, but also a person having in his hands moneys which by the rules of equity are impressed with a trust, and which by those rules he is bound to invest (see *in re* National Permanent Mutual Benefit Building Society, 43 Ch. D. 431; *in re* Manchester Royal Infirmary, Manchester Royal Infirmary v. Attorney-General, 43 Ch. D. 420; and the definition of the expression "trustee" in Section 50 of the present Act).

Trustee applies not only to a sole trustee, but also to the case of several trustees.—See The Interpretation Act, 1889 (52 & 53 Vict. c. 63), Section 1, Sub-section 1 (b).

Unless expressly forbidden by the instrument (if any) creating the trust.—The effect of these words is, where the trust was created

before the passing of the Act, and the trust instrument expressly forbids investment in any particular security specified in this section, or expressly forbids investment in other than certain named securities, to debar the trustees from investing, in the one case in the excluded security, and in the other in any securities other than those indicated in the trust instrument, and, where the trust is created after the passing of the Act, to enable the creator of the trust to exclude the operation of this section, and to preclude the trustees from investing the trust fund in securities other than those pointed out by the trust instrument.

In a case where a testator gave to his trustees all the property that he was then possessed of or might thereafter possess, the same to be sold or realised (except his Great Eastern Railway Stock, which it was his will should not be altered or sold), and the proceeds thereof invested in specified securities, it was held by Mr. Justice North that, notwithstanding that certain securities were specifically indicated by the testator, the trustees might invest the proceeds of conversion in any of the investments authorised by this section, since there was no express prohibition against such investment contained in the will, and Section 4 of this Act expressly provided that the power conferred by this section should be in addition to the power conferred by the instrument (if any) creating the trust (*re* William Norris deceased, *Lambert v. Norris*, heard before the Judge in Chambers on the 29th of June, 1896).

And in the recent case of *in re* Burke, *Burke v. Burke* (1908, 2 Ch. 248), it was decided that a direction to keep trust funds and invest them in one particular way does not "expressly forbid" investment in any of the investments authorised by the Act (and see *in re* Maire, 49 Sol. J. 383).

Similar words were inserted in The Trust Investment Act, 1889, but no such proviso was contained in Section II of Lord St. Leonard's Act (23 & 24 Vict. c. 38), which was repealed by the last-mentioned Statute, and enabled trustees having power to invest upon Government securities or upon Parliamentary stocks, funds, or securities to invest upon any of the stocks, funds, or securities in or upon which, by general order, cash under the control of the Court might from time to time be invested.

It may be useful to bear in mind that Section 27 of The National Debt (Conversion) Act, 1888 (51 & 52 Vict. c. 2), provided that when any stock, converted or exchanged by virtue of that Act into new stock, was held by a trustee, such trustee should be at liberty to sell the same, and to invest the proceeds arising from such sale in any of the securities for the time being authorised for the investment of cash under the control of the High Court, notwithstanding anything to the contrary contained in the instrument creating the trust.

The word "instrument" in this Act includes Act of Parliament (see Section 50).

Invest.—Where a testator has directed a fund to be set apart and appropriated by the trustees of his will for some particular purpose—as, for instance, to provide for an annuity—the power of investment given by this Act does not apparently authorise them at their discretion to invest in any of the investments mentioned in this section; but the appropriation must be made by investing the necessary sum in the investments specifically pointed out by the will, or, if the will is silent as to the mode of investment, in New Consols, treating the interest at two and a half per cent. (*in re Owthwaite, Owthwaite v. Taylor*, 1891, 3 Ch. 494).

A power enabling trustees to invest in “such stocks, funds, and securities as they should think fit” must be read as meaning “honestly think fit” (*re Smith, Smith v. Thompson*, 1896, 1 Ch. 71).

Trustees having a power, with the consent of the tenant for life, to lend the trust funds on personal security may, if satisfied that there is a reasonable prospect of repayment, lend them on personal security to the tenant for life (*in re Laing's Settlement, Laing v. Radcliffe*, 1899, 1 Ch. 593).

A power to advance money on “real or personal security” will, it seems, authorise an advance of money upon a personal undertaking as distinguished from the security of personal property (*Forbes v. Ross*, 2 Bro. C. C. 430; *Langston v. Ollivant G. Cooper*, 33; *Pickard v. Anderson*, 13 L. R. Eq. 608).

As to how far the donee of a power of appointment can alter or extend the range of investments authorised by the instrument creating the power see *in re William Falconer's Trusts* (1908, 1 Ch. 410).

It seems clear that where no appointment is made the donee cannot alter the mode of investment authorised by the instrument creating the power, and that where there is only a partial appointment alteration can only be made so far as regards the property actually appointed (*in re William Falconer's Trusts, ante.*)

Trust Funds.—It was held by Mr. Justice North, in the case of *in re National Permanent Mutual Benefit Society* (43 Ch. D. 431), that the funds of a benefit building society invested in the name of the society, or in the name of trustees who have no power of investment independently of the Act, are not trust funds within this section.

However, it has since been enacted by Section 17 of The Building Societies Act, 1894 (57 & 58 Vict. c. 47), which came into operation on the 1st of January, 1895, that “the powers of investment under Section 25 of The Building Societies Act, 1874, shall include power to invest in or upon any security upon which trustees are for the time being authorised by law to invest.”

It is apprehended that whenever a fund is standing in the name of a trustee who has a power of investment over it, either

by the terms of the trust instrument or by law, such a fund, even though held for charitable purposes, is a trust fund within this section, and so far as there is no prohibition in the trust instrument the power conferred by this section is applicable (*in re Manchester Royal Infirmary, Manchester Royal Infirmary v. Attorney-General*, 43 Ch. D. 420).

Whether at the time in a state of investment or not.—These words were not contained in The Trust Investment Act, 1889 (52 & 53 Vict. c. 32), and they are no doubt inserted in this Act for the purpose of obviating the question which was raised in the case of *in re Dick, Lopes v. Hume-Dick* (1901, 1 Ch. 423; affirmed in the House of Lords as *Hume v. Lopes*, 1892, A. C. 112).

As to a power given by a settlement or will to trustees to allow trust property “to remain in its present state of investment” and the proper construction to be put upon such a power see *in re Smith, Smith v. Lewis* (1892, 2 Ch. 667; *in re Anson's Settlement, Earl of Lovelace v. Anson*, 1907, 2 Ch. 424).

Sub-section (a).—Parliamentary Stocks.—It was said by Vice-Chancellor Sir W. Page Wood that in order to come within the description “Government or Parliamentary stocks or public funds,” a fund ought to be either managed by Parliament, or paid out of the revenues of the British Government, or at least guaranteed by that Government (*Brown v. Brown*, 4 K. & J. 704, 706).

Public Funds.—These words in strictness mean the funds provided by various Acts of Parliament for the payment of the annuities granted by the Government and forming part of the National Debt, and include only Government Annuities (*Slingsby v. Grainger*, 7 H. L. C. 273, 285).

“Government Securities.”—This expression includes Bank Annuities (*ex parte A Projected Undertaking &c.*, 11 Jur. 160), and it probably extends to Exchequer Bills, though the question is not free from doubt, since it has been decided differently in two cases (see *ex parte Chaplin*, 3 Y. & C. Exch. 397, and *ex parte South Western Railway Co.*, 9 Jur. 650).

Trustees may now, however, it is clear, unless forbidden by their trust instrument, invest trust funds in their hands in Exchequer Bills, since by Sub-section (o) of this section trust funds may be invested in any of the stocks, funds, or securities for the time being authorised for the investment of cash under the control or subject to the order of the High Court, and Rule 17 of Order XXII. of the Rules of the Supreme Court which now regulates the investment of such cash includes Exchequer Bills (see *post*, p. 44).

Sub-section (b).—This sub-section does not enable trustees to invest in the purchase of real estate, but only on mortgage of it.

In the case of *in re Mordan*, *Legg v. Mordan* (1905, 1 Ch. 515), a testator had bequeathed the residue of his estate to his trustees, upon trust to invest the same in Government securities, "or upon freehold ground rents, or upon leasehold ground rents not having less than sixty years unexpired, and held direct from the freeholder," and directed his trustees to receive "the dividends, *rents*, and annual income thereof," and to divide and pay the same unto and equally between the testator's two daughters for and during their lives, on the death of either of them the corpus of her share to go to her issue. And it was held by the Court of Appeal that the clause directing investment authorised the trustees to invest the residue in the purchase of freehold ground rents, or of leasehold ground rents of the character specified. In that case, however, it will be observed, the power of investment given to the trustees by the will was a power to invest upon ground rents, whilst the power given by the Act only authorises investment on real or heritable securities.

A trustee who has made an unauthorised investment of trust moneys in the purchase of real or leasehold property can, for the purpose of replacing the fund, sell the property so purchased and make a good title to a purchaser, provided that either all the beneficiaries are not at once competent to make an election to take the property in specie, or, if all the beneficiaries are competent to elect, one of them is willing to join in the conveyance to the purchaser, by which means any question as to the right of the beneficiaries to elect will be obviated, since election must be the act of all of them and not of some only (see *in re Jenkins and H. E. Randall & Co.'s Contract*, 1903, 2 Ch. 362; *in re Patten and the Guardians of the Edmonton Union*, 52 L. J., Ch. 787, 1883, W. N. 104; and *Power v. Banks*, 1901, 2 Ch. 487, 496).

Real or Heritable Securities.—Without reference to statutory enactment, a power to invest on real securities only authorises a mortgage of fee simple or copyhold lands in England or Wales.

By Section 9 of The Trustee Act, 1888 (51 & 52 Vict. c. 59), trustees having power to invest in real securities were authorised, and were to be deemed always to have had authority, to invest upon mortgage of leasehold property held for an unexpired term of not less than two hundred years, and not subject to any reservation of rent greater than one shilling a year, or to any right of redemption, or to any condition for re-entry, except for non-payment of rent. That section, however, is, for the purpose of consolidation, repealed by the present Act, and replaced by Section 5 thereof. As to how far Section 5 affects the general power of investing on real securities given by this sub-section see Section 5 and the notes thereto (*post*, p. 51 *et seq.*).

Trustees advancing trust money on the security of copyholds ought not to rely upon a mere covenant to surrender, but should see that a surrender is actually made (see *Wyatt v. Sharratt*, 3 Beav. 498).

As to how far trustees are justified in making advances on the security of undivided shares or of reversions see Lewin's *On the Law of Trusts*, 11th ed., p. 377.

With regard to the making of advances on the security of undivided shares, it must be borne in mind that such a mode of investment involves a complication with the rights of others which may ultimately lead to litigation and a reduction in the value of the security.

In the absence of an express authority, it is a breach of trust for trustees having the ordinary power to invest on "real securities" to invest on a contributory mortgage (see *Webb v. Jonas*, 39 Ch. D. 660; *Field v. Field*, 1894, 1 Ch. 425, 429; *Stokes v. Prance*, 1898, 1 Ch. 212; *in re Lake*, 1903, 1 K. B. 439; and *in re Dive*, *Dive v. Roebuck*, 1909, 1 Ch. 328, 342).

In *Stokes v. Prance* it was decided that trustees who had advanced trust moneys on a contributory mortgage were not entitled to priority over assignees of their co-mortgagees, although such co-mortgagees were the solicitors acting for the trustees and had guaranteed the sufficiency of the security.

Trustees ought not to advance trust moneys upon a second or other deferred mortgage (*Norris v. Wright*, 14 Beav. 308; and *Drosier v. Brereton*, 15 Beav. 226).

It was indeed decided by *Wright, J.*, in the case of *Want v. Campian* (20 T. L. R. 254), that there is no inflexible rule of equity that a trustee must not invest on the security of a second mortgage, but that if he does so the onus is on him to show that it was a proper investment. That decision, however, cannot, it is conceived, be relied upon so far as regards the rule of equity, at least where the investment is to be made on a second mortgage of real estate in England (see *Stokes v. Prance*, 1898, 1 Ch. 212 and 224; and *Chapman v. Browne* in the Court of Appeal, 1902, 1 Ch. 785, 796, 800 to 804). The rule of equity appears to depend on the great inconveniences and risks incidental to the position of a second mortgagee (*Chapman v. Browne*, *ante*, at p. 796).

Trustees are not justified in advancing trust moneys upon a deposit of title deeds (*Swaffield v. Nelson*, 1876, W. N. 255); but they would probably be justified in making a loan upon the security of a sub-mortgage if they got the legal estate and stood in the place of the original mortgagee with regard to the powers contained in or arising under the original mortgage deed (see *Smetburst v. Hastings* 30 Ch. D. 490).

A stock mortgage—that is a mortgage where trustees sell out stock forming part of their trust fund, and advance the moneys produced by such sale on real security on the terms that the

mortgagor shall replace the stock—is not justified either by the power of varying securities given by this Act, or by the powers of varying usually inserted in settlements (*Pell v. De Winton*, 2 De G. & J., at p. 18; *Whitney v. Smith*, L. R., 4 Ch. 513; and *Branley v. Kelly*, 39 L. J., Ch. 274).

Trustees, too, ought not to advance trust moneys on the security of unfinished houses or other buildings (*in re Walker*, *Walker v. Walker*, 59 L. J., Ch. 386, 391), nor should they invest on the security of real property held for lives (*Lander v. Weston*, 3 Dr. 389; *Head v. Gould*, 1898, 2 Ch. 250, 265).

There does not, however, appear to be any general rule of Courts of Equity that trustees ought not to invest on the security of newly erected houses in a residential neighbourhood, or on houses which are not quite completed, but those circumstances ought to be taken into account in determining the amount which may properly be advanced (*Shaw v. Cates*, 1909, 1 Ch. 389, 396).

As to how far a trustee advancing money on the security of freehold hereditaments is bound to see that the mortgage contains a covenant by the mortgagor to repair, and as to the insertion in mortgages taken by trustees of a clause excluding the operation of Section 18 of The Conveyancing Act, 1881, see *Shaw v. Cates*, *ante*.

Where trustees are empowered to lend trust money they ought not to make an advance to one of themselves, for the settlor must be taken to rely upon the united vigilance of them all with respect to the solvency of the borrower or the value of the security (——— *v. Walker*, 5 Russ. 7; and *Francis v. Francis*, 5 De G. M. & G. 108). And it is apprehended that trustees having power to invest on mortgage security ought not for the same reason to make an advance to the wife of one of their number on the security of her separate estate.

See further as to the duty of trustees when investing on mortgage security Section 8 and the notes thereto, *post* p. 57 *et seq.*

“*Heritable.*”—This word seems to be introduced with reference to real property in Scotland. Heritable property in Scotland does not, however, in all respects correspond with what is known as real property in England: for instance, by Scotch law, leases, even for a fixed term, are heritable unless the destination expressly excludes heirs (see *Paterson's Compendium of English and Scotch Law*, Section 715).

This Act is not to extend to Scotland: that is to say, it is not to affect Scotch trustees or the Scotch law of trusts (see Section 52). It is conceived, however, that English or Irish trustees would, since the sub-section now under consideration extends to “real or heritable securities in Great Britain or Ireland,” be justified in making advances upon the security of property in Scotland which was essentially of a real character; but it is very doubtful whether

they should be advised to do so, having regard to the great difference in Scotland in the law of real property and the practice of conveyancing.

Ireland.—Trustees having power to advance trust money on lands in Ireland might invest it upon mortgage of leaseholds perpetually renewable with a head-rent, because that is a common tenure of land in Ireland (see *Macleod v. Annesley*, 16 Beav. 600), or upon lands held upon fee farm grants made under the provisions of 12 & 13 Vict. c. 105 and 31 & 32 Vict. c. 62, the effect of such grants being to convert the renewable leasehold tenure into a tenure in fee simple.

The law requires from a trustee investing the moneys of his trust upon mortgage security the same degree of diligence that a man of ordinary prudence would exercise in the management of his own affairs (*Learoyd v. Whiteley*, 12 App. Ca. 727, 733; and *Rae v. Meek*, 14 App. Ca. 558, 569, 570).

Sub-section (c).—Bank Stock, however, was not at one time considered as a proper security for investment of trust moneys (*Trafford v. Boehm*, 3 Atk. 440, 444).

The Bank of Ireland was established by Royal Charter in 1783, and holds in Ireland a position analogous to that of the Bank of England, the Government accounts being kept there.

Sub-section (e).—In the case of *in re National Permanent Mutual Benefit Building Society* (1890, W. N. 117), North, J., said that he thought that interest which was charged by Act of Parliament primarily upon a particular fund was not “guaranteed by authority of Parliament.”

Sub-section (g).—The power given by this sub-section is not enlarged by Sub-section 3 of Section 5 of the Act, nor does it authorise investment in the debentures of the class of railways to which it refers, but only in the debenture stock of such railways (see *in re Tattersall*, *Topham v. Armitage*, 1906, 2 Ch. 399, 402, 404; and see Sub-section (o) and the notes thereto).

Sub-section (h).—Trustees must exercise caution when investing under this sub-section. The London Stock Exchange list of railways leased at fixed rentals is not altogether reliable, since some of the railways there mentioned have not been leased, but have been actually transferred to and vested in other railways. Prior to investment reference should be made to the lessor company or companies.

The expressions “leased in perpetuity” and “fixed rental” will probably need judicial interpretation.

Sub-section (i).—Trustees may, it should be borne in mind, invest in any of the stocks, funds, or securities for the time

being authorised for the investment of cash under the control or subject to the order of the Court (see Sub-section (o)), and the order now regulating the investment of cash under the control of or subject to the order of the Court authorises investment in Indian Guaranteed Railways Stocks or Shares (see *post*, pp. 44 and 45).

Sub-section (j).—It will be observed that this sub-section, authorising, as it does, investments in deferred annuities comprised in the Register of Holders of Annuity Class D, and annuities comprised in the Register of Annuitants Class C, of the East Indian Railway Company, is more extensive than the sub-section of The Trust Investment Act, 1889, which it replaces.

And where under this sub-section investment is made in annuities created on the purchase of any railway by the Secretary of State in Council of India, it must be borne in mind that such annuities must not only be annuities similar to the B annuities of the Eastern Bengal, the East Indian, and the Scinde, Punjab & Delhi Railways, and charged on the revenues of India, but they must also be annuities which by Act of Parliament were authorised to be accepted by trustees in lieu of any stock held by them in the purchased railway.

Sub-section (k).—This sub-section is also somewhat wider in its terms than the sub-section for which it is substituted.

Sub-section (l).—The words “company incorporated by Act of Parliament” do not include a company incorporated by registration under The Companies Act, 1862 (see *in re Smith*, Davidson v. Myrtle, 1896, 2 Ch. 590).

Where a testatrix empowered her trustees to invest in “any of the public funds, or in Government or real or leasehold securities, or upon the stocks, shares, or securities of any railway or other public company,” it was held that the words “public company” must be confined to public companies in the United Kingdom (*in re Castlehow*, *Lamondby v. Carter*, 1903, 1 Ch. 352). But it has been held that limited companies registered in the United Kingdom and having their head offices in the United Kingdom, where their boards of directors meet to manage and control the affairs of the companies, are “companies in the United Kingdom” (*in re Hilton*, *Gibbes v. Hale-Hinton*, 1909, 2 Ch. 548).

Where qualification shares are held by a director of a company as trustee he is under no obligation to account to his *cestuis que trust* for the remuneration received by him for acting as director, as remuneration paid by a company under powers in its Articles of Association to a director is not profit derived from the use of his qualification shares, but payment for work done by him under his contract with the company (*in re Doves Coalfield Extension*, Limited, 1907, 2 Ch. 76).

As to the power of trustees to invest in Water Stock of the Metropolitan Water Board see *ante*, p. 35.

Sub-section (m).—As to the effect of Sub-section 3 of Section 5 of this Act on the power of investment conferred by Sub-section (m) see Section 5 and notes thereto (*post*, p. 51 *et seq.*).

“*Returns of Last Census.*”—See *in re Druitt, Druitt v. Dehler* (1903, 1 Ch. 446).

In that case it appeared that in the returns of the census, taken in April, 1901, it was stated that the population of the borough of Bournemouth was 47,003. But in a note at the foot of the page it was stated that, by an order of the Local Government Board, which came into operation on the 9th November, 1901, the borough was extended so as to embrace two specified urban districts and parts of two other parishes, and that the figures at the date of the census were for Bournemouth 59,762. And the Court of Appeal held that the conditions imposed by this sub-section were satisfied, as it was not necessary to go outside the census returns to find that the population of the borough exceeded 50,000.

Sub-section (n).—Trustees are now empowered to invest in Water Stock issued by the Metropolitan Water Board (see *ante*, p. 35).

Sub-section (o).—The investment of cash under the control of or subject to the order of the Court is now regulated by Rule 17 of Order XXII. of the Rules of the Supreme Court.

The following are the investments authorised:—

Two-and-a-half per Cent. Consolidated Stock (previously to the 5th April, 1903, called Two-and-three-quarters per Cent. Consolidated Stock).

Consolidated Three Pounds per Cent. Annuities.

Reduced Three Pounds per Cent. Annuities.

Two Pounds Fifteen Shillings per Cent. Annuities.

Two Pounds Ten Shillings per Cent. Annuities.

Local Loans Stock under The National Debt and Local Loans Act, 1887.

Exchequer Bills.

Bank Stock.

India Three-and-a-half per Cent. Stock.

India Three per Cent. Stock.

Indian Guaranteed Railway Stocks or Shares: provided in each case that such Stocks or Shares shall not be liable to be redeemed within a period of fifteen years from the date of investment.

Stocks of Colonial Governments guaranteed by the Imperial Government.

Mortgage of freehold and copyhold estates respectively in England and Wales.

Metropolitan Consolidated Stock, Three Pounds Ten Shillings per Cent.

Three per Cent. Metropolitan Consolidated Stock.

Debenture, Preference, Guaranteed, or Rentcharge Stocks of Railways in Great Britain or Ireland, having for ten years next before the date of investment paid a dividend on ordinary stock or shares.

Nominal Debentures or Nominal Debenture Stock under The Local Loans Act, 1875: provided that in each case such debentures or stock shall not be liable to be redeemed within a period of fifteen years from the date of investment.

It will be seen that the investments authorised by the Order of Court are almost all included amongst the investments directly authorised by this Act. The following differences, however, between the provisions of the Act and the directions contained in the Order of Court will be noticed: (1) The Act requires that in order to qualify the debenture, or rentcharge, or guaranteed or preference stock of a railway in Great Britain or Ireland as a fit investment for trust funds, the railway company should, during each of the ten years last past before the date of investment, have paid a dividend of not less than three per centum per annum on its ordinary stock, but the Order of Court only requires a dividend to have been paid for ten years next before the date of investment, and is silent as to amount. (2) The Order of Court extends to Indian Guaranteed Railway stocks or shares, provided that in each case such stocks or shares shall not be liable to be redeemed within fifteen years from the date of investment, whilst Sub-section (*i*) of this section only includes debenture stock the interest on which is paid or guaranteed by the Secretary of State in Council of India. (3) The Order of Court extends to nominal debentures and nominal debenture stock issued under The Local Loans Act, 1875, but the Act only extends to nominal or inscribed stock (see Sub-section (*m*) of this section).

Questions will no doubt arise as to these differences between the powers given by the sub-section above referred to and those given by reference to the Order of Court. It is submitted, however, that the powers given by the Act directly, and those given by reference to the Order of Court, are not inconsistent, but that it is the intention of the Act that the powers given by the sub-sections

should be permanent, and so have continuing effect in the event of the Order of Court, which is temporary in its nature, being altered or annulled.

Indian railway investments, to fall within the authority of the Act, whether under the provisions of Sub-section (*i*) or under the reference to the Order of Court, must not be liable to be redeemed within fifteen years of the date of purchase at par, or at some other fixed rate (see *post*, Section 2, Sub-section 2).

If any question should arise with regard to the word "guaranteed," used in the Order of Court with reference to Indian Railways, the Courts would in all probability hold that it must be construed as having the same meaning as that attached to it in Sub-section (*i*) of this section. It must be borne in mind also that the restriction as to price contained in Sub-section 2 of Section 2 of this Act applies to all investments in stock of the kind mentioned in Sub-section (*i*) made under the powers of this Act, whether given directly by that sub-section or by the reference in Sub-section (*o*) to the Order of Court.

After the passing of the Act it was suggested that trustees who might invest in securities authorised by this section, but having a qualification attached to them—as, for instance, in railway stock under Sub-section (*g*)—would, in the event of the investment ceasing to be an investment in which a trustee would be authorised in investing under the powers of the Act, be liable for breach of trust in continuing to hold such securities. By Section 4, however, of The Trustee Act, 1893, Amendment Act, 1894 (57 & 58 Vict. c. 10), it is provided that "a trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the instrument of trust or by the general law."

But the section of the Amendment Act referred to was, in the case of *in re Chapman, Cocks v. Chapman* (1896, 1 Ch. 323), held by Kekewich, J., to have no retrospective operation, so as to exempt trustees from liability for a breach of trust committed before the passing of the Act in retaining an investment not authorised by the instrument of trust or by the general law. That case was, it is true, afterwards reversed on the facts by the Court of Appeal (1896, 2 Ch. 763), but in the judgments on appeal no reference was made to the section or to the decision in the Court below as to its effect.

The Court will not invest trust funds in securities prohibited by the settlor (see *Ovey v. Ovey*, 1900, 2 Ch. 524, in which Cozens-Hardy, J., declined to follow *in re Wedderburn's Trusts*, 9 Ch. D. 112).

"*And may also from time to time vary any such investment.*"—This enables trustees to vary investments made upon any such stocks, funds, or securities as are specified in this section, without regard to the time at which the investment may have been made (*Hume v. Lopes*, 1892, App. Ca. 112, which overrules *in re Manchester*

Royal Infirmary, Manchester Royal Infirmary *v.* Attorney-General, 43 Ch. D. 420). The power, however, does not extend to any investment in stocks, funds, or securities other than those mentioned in the section (*in re* Dick, Lopes *v.* Hume-Dick, 1891, 1 Ch., at p. 433, by Kay, L. J.), and therefore where the instrument creating the trust gives a wider range of investment than that given by the Act an express power to vary investments should be inserted.

It was held by Kekewich, J., in the case of *in re* Walker, Walker *v.* Walker (59 L. J., Ch. 368), that when a trust legacy has been appropriated it is a breach of trust to vary the investment without reasonable cause, and upon the legacy falling into possession the trustee is liable to indemnify the legatee against any loss resulting from the change of investment.

It must be borne in mind that Sections 1 and 7 of The Trust Investment Act, 1889, are still unrepealed. The bodies referred to in Section 7 of that Act will have to consider the effect of the repeal of the sections enumerating the authorised investments. It is apprehended that Sub-section 1 of Section 38 of The Interpretation Act, 1889 (52 & 53 Vict. c. 63), applies, and that Section 7 of the Act of 1889 must henceforth be construed as referring to the stocks, funds, shares, or securities in which trustees are authorised by the present Act to invest (see *in re* Manchester Royal Infirmary, Manchester Royal Infirmary *v.* Attorney-General, 43 Ch. D. 420, at p. 427).

On reference to Section 7 of The Trust Investment Act, 1889 (*ante*, p. 29), it will be noticed that the bodies therein referred to are, in accordance with a well-recognised principle of municipal legislation, debarred from investing in any stocks, funds, shares, or securities issued or created by themselves, or in real or heritable securities.

In cases of emergency the Court has an extraordinary jurisdiction, founded on necessity, to go beyond the mere administration of a trust according to the terms of the instrument creating it; but the Court will not sanction a change of investment not authorised by the instrument of trust on the ground merely that it will be to the advantage of the beneficiaries (*in re* New, 1901, 2 Ch. 534, 544). As to the circumstances which will induce the Court to exercise this extraordinary jurisdiction see *in re* Tollemache (1903, 1 Ch. 457, affirmed at p. 955).

As to the investment by trustees of purchase money arising from the sale of settled land under The Irish Land Act, 1903, see Section 51 of that Act.

2. (1) A trustee may under the powers of this Act invest in any of the securities mentioned or referred to in Section One of this

Purchase at a premium of redeemable stocks.

Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

(2) Provided that a trustee may not under the powers of this Act purchase at a price exceeding its redemption value any stock mentioned or referred to in Sub-sections (g), (i), (k), (l), and (m) of Section One, which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such stock as is mentioned or referred to in the sub-sections aforesaid, which is liable to be redeemed at par or at some other fixed rate, at a price exceeding fifteen per centum above par or such other fixed rate.

(3) A trustee may retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Act.

Section 2.—By the rules of equity trustees, however ample their powers of investment, were not justified in investing in determinable securities (*Stewart v. Sanderson*, L. R., 10 Eq. 26). This section, however, authorises the investment of trust funds in any of the securities mentioned or referred to in Section 1 of this Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value, but so, nevertheless, that trustees are not to invest in any stock mentioned or referred to in Sub-sections (g), (i), (k), (l), and (m) of Section 1, at a price exceeding its redemption value, if such stock is liable to be redeemed within fifteen years from the time of investment at par, or at some other fixed rate, or invest in any such stock as is mentioned or referred to in those sub-sections if it is liable to be redeemed at par or at some other fixed rate, and its price exceeds fifteen per cent. above par or such other fixed rate.

Notwithstanding, however, the provisions of this section the Court, in exercising its discretion with regard to the investment

of cash under its control, would probably, in most cases, give preference to irredeemable securities (*Roberts v. Morgan*, 23 L. R., Ir. 118; and *re Phelan*, *ibid.* 336).

Trustees, in exercising the power of investment given by this Act, should, whilst looking to the circumstances of the case and the position of the parties beneficially entitled, bear in mind that it is their duty, so far as may be, to keep the fund intact for the persons entitled in remainder (*Hume v. Richardson*, 4 De G. F. & J. 29).

Sub-section 3.—This enables trustees to retain redeemable securities until the time fixed for redemption without incurring any liability for loss occasioned thereby to the trust estate. Trustees, however, when retaining redeemable securities, must act in good faith and without negligence.

3. Every power conferred by the preceding sections shall be exercised according to the discretion of the trustee, but subject to any consent required by the instrument (if any) creating the trust with respect to the investment of the trust funds. Discretion of trustees.

Section 3.—“According to the discretion of the trustee.”—The Court will not interfere with the discretion of trustees in the exercise of a power to vary securities unless such power is exercised in an improper manner or upon unreasonable grounds (*Lee v. Young*, 2 Y. & C. C. 532).

Where trustees have an absolute discretion as to the time for converting into money the personal estate of their testator invested in stocks, shares, and other investments the Court will not, it seems, although such stocks, shares, and investments be of an unauthorised description, interfere with such discretion (*in re Hargreaves*, *Hick v. Hargreaves*, 1901, 2 Ch. 547 n).

And where a testator gives his personal estate to trustees upon trust for persons in succession, with a discretionary power to the trustees to retain any investments belonging to him at the time of his death for such period as to them may seem proper, it seems that the tenant for life is entitled to the income arising from retained investments during the period of retention by the trustees (*in re Bates*, *Hodgson v. Bates*, 1907, 1 Ch. 22). And the tenant for life will be so entitled whether the securities retained are of a permanent or of a wasting nature (*in re Nicholson*, *Eade v. Nicholson*, 1909, 2 Ch. 111).

Sometimes trustees are bound by the terms of the trust instrument to obey the directions of the tenant for life as to

investment, and in such a case apparently they cannot, if the investment they are required to make is an authorised one, decline to comply with the request of the tenant for life merely on the ground that from the nature of the investment they would have to incur some liability (*Beauclerk v. Ashburnham*, 8 Beav. 322; *Cadogan v. Earl of Essex*, 2 Dr. 227).

The Court has power to control trustees who have a discretionary power to apply income for the maintenance and advancement of infants where the trustees attempt to exercise their discretion in an arbitrary and unreasonable manner (*in re Hodges*, *Davey v. Ward*, 7 Ch. D. 754).

And where real estate is devised to trustees in trust for sale, with a discretionary power to postpone the sale, the Court will not interfere with a *bonâ fide* exercise of their discretion as to the time and mode of sale (*in re Blake*, *Jones v. Blake*, 29 Ch. D. 913).

Where a mere discretionary power of sale is given to trustees, the Court will not interfere with the discretion of the trustees (*in re Courtier*, *Coles v. Courtier*, 34 Ch. D. 136). But what appears to be a mere discretionary power may be part of a trust for management of the estate, and in such a case the Court will enforce the trust for management, and will compel the trustees to utilise the machinery entrusted to them (*Nickisson v. Cockill*, 3 D. G. J. & Sm. 622; *Tempest v. Lord Camoys*, 21 Ch. D. 576 *n*; *in re Courtier*, *Coles v. Courtier*, 34 Ch. D. 136, 140, 141).

“*Subject to any consent required by the instrument (if any) creating the trust.*”—If consent be necessary to the exercise of the power, it must be procured in strict accordance with the requirements of the trust instrument. A prospective consent is bad, and would not protect trustees if charged with breach of trust (*Child v. Child*, 20 Beav. 50). So a subsequent consent will not exonerate the trustees (*Bateman v. Davis*, 3 Madd. 98), unless the person whose consent is necessary by some act of his afterwards shows his acquiescence, as where he receives dividends arising from the new investment without objection (*Stevens v. Robertson*, 37 L. J., N. S., Ch. 499; and *re Massingberd*, *Clark v. Trelawney*, 63 L. T., N. S., 296). In some cases subsequent acquiescence would be ineffectual to shield the trustees—as, for instance, where the instrument creating the trust expressly requires a previous consent to any investment by the trustees (see *Stevens v. Robertson*, 37 L. J., N. S., Ch. 499). If the trust instrument requires the consent to be in writing, that requirement should be strictly complied with (*Cocker v. Quayle*, 1 Russ. & My. 535; and *Worthington v. Evans*, 1 S. & S. 165). Consent will be presumed after a considerable lapse of time (*re Adrian Birch*, 17 Beav. 358).

It seems, however, that where trust funds are invested on inadequate security it is the duty of the trustees to reinvest them, although the written consent of the tenant for life, rendered necessary

by the trust instrument to any change in investment, is refused and the security is one expressly authorised by the trust (*Harrison v. Thexton*, 4 Jur., N. S., 550).

But where trustees have power to change securities, but not without consent, the discretion of the trustees to continue the trust property in its present form of investment will not be controlled by the Court unless such discretion is exercised in such a manner as to endanger the trust fund (*De Manneville v. Compton*, 1 V & B. 354).

4. The preceding sections shall apply as well to trusts created before as to trusts created after the passing of this Act, and the powers thereby conferred shall be in addition to the powers conferred by the instrument (if any) creating the trust.

Application
of pre-
ceding
sections.

Section 4.—“*And the powers thereby conferred shall be in addition to the powers conferred by the instrument (if any) creating the trust.*”—Having regard to these words, the true mode of construing the power of investment given by the preceding sections is to read into the instrument creating the trust the various enumerated securities, unless they are excluded by the express language of such instrument (*in re Dick, Lopes v. Hume-Dick*, 1891, 1 Ch. 423, at p. 429, by Fry, L. J.; and *Hume v. Lopes*, 1892, A. C. 112, at p. 117, by Lord Field).

5. (1) A trustee having power to invest in real securities, unless expressly forbidden by the instrument creating the trust, may invest and shall be deemed to have always had power to invest—

Enlarge-
ment of
express
powers of
investment.

- (a) On mortgage of property held for an unexpired term of not less than two hundred years, and not subject to a reservation of rent greater than a shilling a year, or to any right of redemption or to any condition for re-entry, except for nonpayment of rent; and

(b) On any charge, or upon mortgage of any charge, made under The Improvement of Land Act, 1864.

27 & 28 Vict.
c. 114.

(2) A trustee having power to invest in the mortgages or bonds of any railway company or of any other description of company may, unless the contrary is expressed in the instrument authorising the investment, invest in the debenture stock of a railway company or such other company as aforesaid.

38 & 39 Vict.
c. 83.

(3) A trustee having power to invest money in the debentures or debenture stock of any railway or other company may, unless the contrary is expressed in the instrument authorising the investment, invest in any nominal debentures or nominal debenture stock issued under The Local Loans Act, 1875.

43 & 44 Vict.
c. 8.

(4) A trustee having power to invest money in securities in the Isle of Man, or in securities of the Government of a colony, may, unless the contrary is expressed in the instrument authorising the investment, invest in any securities of the Government of the Isle of Man under The Isle of Man Loans Act, 1880.

28 & 29 Vict.
c. 78.

(5) A trustee having a general power to invest trust moneys in or upon the security of shares, stock, mortgages, bonds, or debentures of companies incorporated by or acting under the authority of an Act of Parliament, may invest in or upon the security of mortgage debentures duly issued under and in accordance with the provisions of The Mortgage Debenture Act, 1865.

Section 5.—It has been said that this section does not operate so as to enlarge the general statutory powers of investment conferred by Section 1 of the Act, but is only applicable to cases where the powers of investment referred to are expressly given by a trust instrument, and this, save, perhaps, with regard to Sub-section 1, is in all probability the correct view of the scope and intention of the section. Although no general rule can, by reason of the uncertainty of the practice as to the insertion of the marginal notes of Acts of Parliament on the Rolls of Parliament, be laid down as to how far the marginal notes of an Act can be used in interpreting it (see the remarks of Jessel, M. R., in *Sutton v. Sutton*, 22 Ch. D. 511, at p. 513, dissenting from *in re Venour's Settled Estates*, *Venour v. Sellon*, 2 Ch. D. 522), the marginal note of this section certainly refers only to "enlargement of express powers of investment." Moreover, some of the sub-sections are clearly applicable only to cases where an express power is given, and it will be observed that Sub-section 1 refers, not, like Section 1 of the Act, to "the instrument (if any) creating the trust," but simply to "the instrument creating the trust," and that in Sub-sections 2, 3, and 4 reference is expressly made to "the instrument authorising the investment." And in the case of *in re Tattersall*, *Topham v. Armitage* (1907, 2 Ch. 399), it was expressly decided that Sub-section 3 is impliedly confined to the enlargement of express powers of investment. And in the same case the Court expressed an opinion that Sub-section 4 obviously refers to a trustee having express power under the trust instrument to invest money in securities in the Isle of Man. It is, however, suggested that a trustee who takes a power of investment under his trust instrument, and is not expressly excluded from investment in real securities, is within the scope of Sub-section 1, since that sub-section makes no reference to "the instrument authorising the investment," but speaks only of "the instrument creating the trust," and the true mode of construing the powers of investment given by Section 1 of the Act is to read into the trust instrument the various enumerated securities (see Section 4, *ante*, and the notes thereto).

It is doubtful whether the powers conferred by Sub-sections 2, 3, 4, and 5 extend to trusts created before the passing of the Act (see *in re Tattersall*, *Topham v. Armitage*, 1907, 2 Ch. 399, 404).

Sub-section 1 (a).—This sub-section replaces Section 9 of The Trustee Act, 1888 (51 & 52 Vict. c. 59), which Act, with the exception of Sections 1 and 8, is repealed by the present Act.

Prior to the passing of The Trustee Act, 1888, and the cases mentioned below, the opinion of conveyancers and text-book writers was in favour of the view that "securities upon chattel interests for long terms of years not burdened with rent or covenants, such as the terms created by settlement or will, with a view to raising

money for portions or other purposes of family provision, were a suitable mode of investment of money authorised to be invested on real security" (Davidson's *Precedents and Forms in Conveyancing*, 3rd ed., vol. iii., p. 37; and Lewin's *On the Law of Trusts*, 8th ed., p. 337, Section 57). In the case of *in re Chennell* (8 Ch. 492, at p. 507), Jessel, M. R., is reported to have said that such an investment "would be justified if the leaseholds were held at a peppercorn rent for a long term without covenants and without impeachment of waste"; but on this *obiter dictum* being brought to his notice in *re Boyd's Settled Estates* (14 Ch. D. 626) he expressed his opinion that, as a general rule, long terms of years did not answer the description of "real securities." In this state of uncertainty the law remained until the case of *Leigh v. Leigh* (1886, W. N. 191; 35 W. R. 121), in which Stirling, J., held that long leaseholds (in the case in question of one thousand years and fifteen hundred years respectively, being terms for raising portions) were not "real securities."

The effect of this sub-section in cases where it applies is similar to that of Section 9 of the Act of 1888, and makes an investment upon mortgage of property held for a long term of years a "real security." The sub-section, too, like the corresponding section of the Act of 1888, has a retrospective operation.

To bring the term within the meaning of a real security—

1. It must at the date of investment being effected have still not less than two hundred years to run.
2. The rent reserved must not exceed a shilling a year.
3. The term must not be subject to any right of redemption.
4. The term must not be subject to any condition for re-entry except for nonpayment of rent.

As to 3, the right of redemption here referred to is not the right which must of necessity, from the nature of the transaction where a mortgage is effected, exist between the trustee, who advances the money, and his mortgagor, but a trust or right of redemption affecting the term in favour of the freeholder or other person entitled in reversion expectant on the term in question.

It would seem that even if the term mortgaged to a trustee complied with the conditions making it convertible under The Conveyancing Acts, 1881 and 1882 (Section 65 of 44 & 45 Vict. c. 41, and Section 11 of 45 & 46 Vict. c. 39), into a freehold, the trustee to whom it is mortgaged could not so convert it, as it would be improper to allow him to change the nature of his mortgagor's estate.

Sub-section 1 (b).—This is in effect a re-enactment of that portion of Section 60 of The Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), which relates to trustees, and is repealed by this Act (see Section 51 and Schedule).

Sub-section 2.—This is a re-enactment of the authority given to trustees to invest in debenture stock by The Debenture Stock Act, 1871 (34 & 35 Vict. c. 27), that Act being wholly repealed by the present Act (see Section 51 and Schedule).

Sub-section 3.—This is a re-enactment of Section 27 of The Local Loans Act, 1875 (38 & 39 Vict. c. 83), such section being for the purpose of consolidation repealed by this Act.

Sub-section 4.—This is a re-enactment of Section 7 of The Isle of Man Loans Act, 1880 (43 & 44 Vict. c. 8), which section, so far as it relates to trustees, is repealed by the present Act (see Section 51 and Schedule).

Sub-section 5.—This is a re-enactment of Section 40 of The Mortgage Debenture Act, 1865 (28 & 29 Vict. c. 78), such section being repealed by the present Act (see Section 51 and Schedule).

It is provided by The Mortgage Debenture Act, 1865, that a company, to entitle it to issue mortgage debentures under the Act, must under its special Act, or its Memorandum of Association, be limited to the following objects:—1. The making of advances of money upon any of the following securities:—(a) Lands, messuages, hereditaments, and real property, and all estates and interests therein; (b) Rates, dues, assessments, and impositions upon the owners or occupiers of lands or real property imposed by or under the authority of any Act of Parliament, public or private, Royal Charter, Commission of Sewers or Drainage, or other sufficient legal authority; (c) Charges or securities upon or affecting lands, messuages, hereditaments, and real property executed, made, given, or issued under the authority of any Act of Parliament, public or private. 2. The borrowing of money on transferable mortgage debentures or upon one or more of the securities above mentioned. And, in addition, the company must have a paid-up capital of not less than £100,000, in shares of the nominal value of not less than £50, of which not less than one tenth, nor more than one half, must have been paid up.

Under the provisions of The Mortgage Debenture Act, 1865, and The Mortgage Debenture Amendment Act, 1870 (33 & 34 Vict. c. 20), the securities upon or in respect of which such mortgage debentures may be founded and issued must be securities affecting property in England or Wales of the following description:—(a) Lands, messuages, hereditaments, or real property, or some estate or interest therein; (b) Rates, dues, assessments, or impositions upon the owners or occupiers of lands, messuages, hereditaments, or real

property, imposed by or under the authority of any Act of Parliament, public or private, Royal Charter, Commission of Sewers or Drainage, or other sufficient legal authority; (c) Charges upon or affecting lands, messuages, hereditaments, or real property, executed, made, given, or issued under the authority of any Act of Parliament, public or private. But from the securities described in Paragraph (a) are excepted securities upon mines or mineral properties, quarries, brickfields, factories, mills, and other buildings or works for manufacturing purposes, and also securities upon leasehold estates determinable upon a life or lives, and not renewable, or held for a term, of which at the date of the security less than fifty years shall be unexpired, or which are held at a rent beyond one fourth part of the annual value of the property leased as estimated at the date of the security given to the company, and verified by the statutory declaration of a surveyor as therein provided, or which are subject to any rent beyond a nominal rent or ground rent.

Power to invest notwithstanding drainage charges.

10 & 11 Vict. c. 32.

6. A trustee having power to invest in the purchase of land or on mortgage of land may invest in the purchase or on mortgage of any land, notwithstanding the same is charged with a rent under the powers of The Public Money Drainage Acts, 1846 to 1856, or The Landed Property Improvement (Ireland) Act, 1847, or by an absolute order made under The Improvement of Land Act, 1864, unless the terms of the trust expressly provide that the land to be purchased or taken in mortgage shall not be subject to any such prior charge.

Section 6.—The object effected by this section is the practical re-enactment of Section 67 of The Public Money Drainage Act, 1846 (9 & 10 Vict. c. 101); Section 53 of The Landed Property Improvement (Ireland) Act, 1847 (10 & 11 Vict. c. 32); and Section 61 of The Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), severally repealed by this Act (see Section 51 and Schedule).

Trustees not to convert inscribed stock into certificates to bearer.

26 & 27 Vict. c. 73.

7. (1) A trustee, unless authorised by the terms of his trust, shall not apply for or hold any certificate to bearer issued under the authority of any of the following Acts: that is to say—

(a) The India Stock Certificate Act, 1863;

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|-----------------------------------|-------------------------|
| (b) The National Debt Act, 1870; | 33 & 34 Vict.
c. 71. |
| (c) The Local Loans Act, 1875; | 38 & 39 Vict.
c. 83. |
| (d) The Colonial Stock Act, 1877. | 40 & 41 Vict.
c. 59. |

(2) Nothing in this section shall impose on the Bank of England or of Ireland, or on any person authorised to issue any such certificates, any obligation to inquire whether a person applying for such a certificate is or is not a trustee, or subject them to any liability in the event of their granting any such certificate to a trustee, nor invalidate any such certificate if granted.

Section 7.—This section practically re-enacts Section 4 of The India Stock Certificate Act, 1863 (26 & 27 Vict. c. 73); Section 29 of The National Debt Act, 1870 (33 & 34 Vict. c. 71); Section 21 of The Local Loans Act, 1875 (38 & 39 Vict. c. 83); and Section 12 of The Colonial Stock Act, 1877 (40 & 41 Vict. c. 59), which are severally repealed by the present Act (see Section 51 and Schedule).

“*Authorised by the terms of his trust.*”—A direction to invest in the names of trustees does not authorise an investment in securities to bearer of a class otherwise authorised (*in re Roth, Goldberger v. Roth*, 1896, W. N. 15 and 16).

Where trustees are expressly authorised to retain or invest in convertible securities, such as bonds transferable by delivery with coupons attached, they may deal with them in the way usual with prudent men, and may deposit them in their joint names with the bankers to the trust upon a simple acknowledgment by the bankers of the receipt thereof (*in re De Pothonier, Dent v. De Pothonier*, 1900, 2 Ch. 529).

“*The Colonial Stock Act, 1877.*”—See *ante*, p. 35.

8. (1) A trustee lending money on the security of any property on which he can lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that it appears to the Court that in making the loan the

Loans and investments by trustees not chargeable as breaches of trust.

trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two equal third parts of the value of the property as stated in the report, and that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making such loan he dispensed either wholly or partly with the production or investigation of the lessor's title.

(3) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase of or in lending money upon the security of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if, in the opinion of the Court, the title accepted be such as a person acting with prudence and caution would have accepted.

(4) This section applies to transfers of existing securities as well as to new securities, and to investments made as well before as after the commencement of this Act, except where

an action or other proceeding was pending with reference thereto on the Twenty-fourth day of December, One thousand eight hundred and eighty-eight.

Section 8, Sub-section 1.—This is, in effect, a re-enactment of Sub-section 1 of Section 4 of The Trustee Act, 1888, that section being repealed by the present Act (see Section 51 and Schedule). The sub-section referred to is in the following terms:—“No trustee lending money upon the security of any property shall be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of such property at the time when the loan was made, provided that it shall appear to the Court that in making such loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two equal third parts of the value of the property as stated in such report, and that the loan was made under the advice of such surveyor or valuer expressed in such report. And this section shall apply to a loan upon any property of any tenure, whether agricultural or house or other property, on which the trustee can lawfully lend.” There is some difference between the wording of the repealed sub-section and that of the sub-section of the present Act now under consideration, and it will be observed that the provision at the end of the repealed sub-section that the “section shall apply to a loan upon any property of any tenure, whether agricultural or house or other property, on which a trustee can lawfully lend,” is omitted. The two sub-sections are, however, it is conceived, the same in effect.

Previously to the passing of The Trustee Act, 1888, the rule was that a trustee before advancing trust money on mortgage ought to make due inquiry with regard to the value of the property offered as security (*Bell v. Turner*, L. R., 17 Eq. 439), and to have an independent valuation of it made on his own behalf (*Ingle v. Partridge* No. 2, 34 Beav. 411) by a competent valuer, with local knowledge sufficient to enable him to arrive at a valuation (*Budge v. Gummow*, 7 Ch. D. 719, see p. 722; *Fry v. Tapson*, 28 Ch. D. 279), who had been instructed that the advance was to be made out of trust money, and that it was desired to ascertain the actual value of the property (*in re Olive*, *Olive v. Westerman*, 34 Ch. D. 70). Trustees infringing the rule, although acting in good faith, were also made liable, such infringement being a breach

of trust, and even the employment by them of competent solicitors was held to be no excuse, on the ground that the appointment of a competent valuer was not within the scope of the solicitor's employment, but was a matter as to which the trustees ought to have exercised their own judgment (*Fry v. Tapson*, 28 Ch. D. 268, 280, 282).

It was also laid down by the Courts of Equity that the amount in proportion to the value of the property proposed as a security which trustees with power to invest upon mortgage ought to advance was two thirds where the property was of a permanent value, as freehold land (*Stickney v. Sewell*, 1 My. & Cr. 8; *Macleod v. Annesley*, 16 Beav. 600; *Ingle v. Partridge No. 2*, 34 Beav. 411; *Smethurst v. Hastings*, 30 Ch. D. 498; *Learoyd v. Whiteley*, 12 App. Ca. 727, 733), and one half where the property was house property (*Norris v. Wright*, 14 Beav. 291; *Fry v. Tapson*, 28 Ch. D. 268).

It has been said that the rule was only a general rule (see Lewin's *On the Law of Trusts*, 9th ed., p. 357), and not a hard and fast one (*in re Olive*, *Olive v. Westerman*, 34 Ch. D., at p. 73; *Learoyd v. Whiteley*, 12 App. Ca. 733, 734). Still a trustee who disregarded it took upon himself a great risk (*in re Salmon*, *Priest v. Uppleby*, 42 Ch. D. 351, 369, 370). It is clear that, whilst on the one hand where trustees, acting in good faith upon the representations of competent persons as to the permanency of the value of the mortgaged property, or as to an anticipated advance in such value, had to some slight extent infringed the rule, they would probably have been protected by the Court, there are cases on the other hand where it has been decided that upon certain classes of real property—as, for instance, premises depending for their value upon some trade carried on upon them—trustees, according to circumstances, would not be justified in making advances at all, or would only be justified in making advances far smaller, in proportion to the estimated value, than those authorised by the rule (*Stickney v. Sewell*, 1 My. & Cr. 8; *Royds v. Royds*, 14 Beav. 54; *Stretton v. Ashmall*, 3 Dr. 12; *Budge v. Gummow*, 7 Ch. D. 719; and *Learoyd v. Whiteley*, 12 App. Ca. 733).

The rules governing advances of trust money were, however, materially altered by The Trustee Act, 1888. After the commencement of that Act no trustee who prior to such commencement had advanced or thereafter should advance trust money on mortgage security, in accordance with the terms of the trust instrument, could be charged with breach of trust, by reason of the proportion borne by the amount of the loan to the value of the property forming the security, if it were found that the trustee, when making the loan, was acting upon a report as to the value made by a person whom the trustee reasonably believed to be an able practical surveyor or valuer, instructed and employed by the trustee independently of any owner of the property, and with a view to the particular investment (*in re*

Walker, *Walker v. Walker*, 59 L. J., Ch. 386), whether such surveyor or valuer carried on business in the locality where the property was situated or elsewhere, and that the amount of the loan did not exceed two equal third parts of the value of the property as stated in such report. The Trustee Act, 1888, abolished the rule which required the valuer employed to be a person having local knowledge and experience (see *Budge v. Gummow*, 7 Ch. D. 719).

It was held by Kekewick, J., in the case of *in re Somerset, Somerset v. Earl Poulett* (1894, 1 Ch. 231), that the words "believed to be" in Sub-section 1 of Section 4 of The Trustee Act, 1888, do not govern the words "instructed and employed independently of any owner of the property," and therefore, in order to entitle a trustee lending money on the security of real property to the protection of the section, he must be able to show that the surveyor or valuer on whose report he acted was in fact so instructed and employed.

The trustees ought to choose the valuer themselves and not leave the choice to their solicitors (see *Fry v. Tapson*, 28 Ch. D. 268, 280, 281).

The rules introduced by Section 4 of the Act of 1888 will continue to govern advances of trust money upon mortgage security, since the section referred to is, in effect, re-enacted and restored by the present Act.

A valuation which merely states the amount for which the property is a good security, without stating the value of the property, is not apparently a sufficient valuation within this sub-section (*in re Stuart, Smith v. Stuart*, 1897, 2 Ch. 583).

The surveyor who is to make the valuation on behalf of trustees advancing trust moneys on mortgage ought not to be employed on the terms that if the transaction falls through he will take either no fee, or only a preliminary fee, for, where such an arrangement is entered into, it is obvious that it is to the surveyor's interest to make such a report as would enable the transaction to go through, whereas it is his duty to advise the trustees independently and without reference to his fees. A valuation obtained under such circumstances would not, it seems, be a proper and sufficient one within the sub-section (see the *Marquis of Salisbury v. Keymer*, 1909, W. N., p. 31; and see *in re Dive, Dive v. Roebuck*, 1909, 1 Ch. 328, 343).

Valuers having once ascertained the value of a property are not *primâ facie* justified in advising, whatever may be the nature of the property and the method of valuation adopted, an advance to the extent of two thirds of such value (*Shaw v. Cates*, 1909, 1 Ch. 389, 398).

And where a security is introduced to a trustee by a surveyor such surveyor ought not to be employed to make the necessary valuation (see *in re Dive, Dive v. Roebuck*, *ante*).

As to what amounts to "instruction and employment" of a surveyor independently of any owner of the property see *Shaw v. Cates* (1909, 1 Ch. 389, 403, 404).

It must be borne in mind that although a valuer's report may advise an advance of two thirds of the value of several properties taken together, such report will not in many cases justify an advance of two thirds of the value of any one or more of the properties apart from the others or other of them. And this is especially the case where at the date of the report some of the properties are not bearing income (*Shaw v. Cates*, 1909, 1 Ch. 389, 402).

As to the proper method to be followed in arriving at the value of a property offered as a mortgage security see *Shaw v. Cates* (1909, 1 Ch., at pp. 406, 407).

It might be suggested that the omission from this sub-section of the provisions contained in the latter part of Sub-section I of Section 4 of the Act of 1888 as to the section applying to a loan on any property of any tenure, "whether agricultural or house or other property," restored the rule of equity as to two thirds on land and one half on houses. It is, however, submitted that the provision referred to was inserted in the sub-section of the repealed Act by way of abundant caution, rather than because it was absolutely necessary, and that the language of the sub-section of the present Act, at least, is sufficient to abrogate the rule without any special provision, for it extends to a trustee lending money on the security of any property, if he acts on a report as to value in accordance with the terms of the Act, and the amount of the loan does not exceed two equal third parts of the value of the property as stated in the report. Of course the property upon the security of which the advance is made must be of such a kind as the trustee is authorised by law, or by the instrument creating the trust, to invest upon the security of. It must also be borne in mind that neither the repealed Act of 1888 nor this sub-section of the present Act has enlarged the powers of trustees as to the description of property to be accepted as a security, or absolved them when investing trust moneys from using the reasonable caution of prudent men.

It should be remembered that the duty of a trustee is not to take such care only as a prudent man would take if he had only himself to consider. It is rather to take such care "as an ordinarily prudent man would take if he were minded to make an investment for the benefit of other people, for whom he felt morally bound to provide" (*in re Whiteley*, *Whiteley v. Learoyd*, 33 Ch. D. 347, at p. 355; affirmed 12 App. Ca. 727, *sub nom. Learoyd v. Whiteley*). This shows in effect that the true rule which should govern the conduct of trustees is that a trustee in performing the duties incident to his position should act as an

ordinarily prudent man of business would act if acting for other persons with a due regard to the respective positions and interests of such persons—a standard far different from that which is supposed to be the guide for trustees, as it demands more prudence than a man might be in the habit of exhibiting in his own affairs.

If the property upon the security of which an advance is to be made is liable to deteriorate, a prudent man ought now as much as before the Act to require a larger margin for his protection, and trustees omitting to require such margin will be liable (see *Shaw v. Cates*, 1909, 1 Ch. 389, 398, 399).

When trustees have complied with the requirements of the Act as to valuation, and have otherwise acted with prudence, they will not, it is conceived, be liable for loss through subsequent depreciation of property (*in re Whiteley*, *Whiteley v. Learoyd*, *ante*).

The position of a trustee committing an honest breach of trust has also been modified by Section 3 of The Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35).

The change introduced by the Act of 1888 in the rules of equity as to the proportion of the advance to the value of the security was a much needed one, and probably relieved the majority of trustees having power to invest on mortgage from liability; for in practice the rule was constantly infringed, as a rigid adherence to it would have almost shut out trustees from investments on house property, the owners of which would rarely be content with so small an advance as one half of the actual value.

Trustees, notwithstanding the latitude now given them, must not forget their usual prudence and circumspection, but bear in mind that they are not warranted in advancing trust moneys upon contributory mortgage, or in doing what is sometimes done by careless trustees—namely, lending the trust moneys on a second, third, or other postponed security (*Chapman v. Browne*, 1902, 1 Ch. 785, 796, 800 to 804; and see *ante*, p. 41). In such cases the law wholly ignores the transaction, and the trustee thus acting does so at his peril, and must replace the money advanced, and make good any loss.

It seems that there is no rule of equity which makes it incumbent on a trustee, who has made an authorised investment on mortgage security, to make periodic inspection of the property, or to make periodical or further investigations as to either the title to the security or the solvency or sufficiency of the mortgagor (*Rawstone v. Rowley*, 24 T. L. R. 51, 1909, 1 Ch., p. 409; *Shaw v. Cates*, 1909, 1 Ch. 389, 409).

Sub-section 2.—This is a re-enactment of Sub-section 2 of Section 4 of the Act of 1888.

By Section 2 of The Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), it was enacted that “under a contract to grant or assign a term of years, whether derived or to be derived

out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold." By Section 3 of the same Act it was also provided that "trustees who are either vendors or purchasers might buy or sell without excluding the application of the second section." This Act, for the purposes of consolidation, repeals Section 3 of the Act referred to (see Section 51 and Schedule), and re-enacts it (see Section 15, *post*).

By Section 13 of The Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), it was enacted that "under a contract to sell or assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion."

By Section 66 of the same Act it is provided that trustees, executors, and other persons in a fiduciary position are not to be deemed guilty of neglect or breach of duty, or become in any way liable for omitting to negative in any contract the inclusion of the provisions or stipulations of that Act.

Trustees, however, were not by either of the Acts referred to relieved, when investing on leasehold security, from seeing that the title was in all respects a marketable one, and therefore of investigating the lessor's title.

The provision made by The Trustee Act, 1888, was much needed, for the result of the practice, which had grown up, of inserting in agreements for leases, and in the conditions under which leaseholds were sold, a stipulation that production of the lessor's title should not be required, combined with The Vendor and Purchaser Act, 1874, and The Conveyancing and Law of Property Act, 1881, was practically to debar trustees, unless they were willing to incur the liability of being charged as for a breach of trust, from investing on leasehold securities.

It must, however, be borne in mind by trustees that the obligation to require production of the lessor's title is not absolutely removed, but only where the title accepted is such as in the opinion of the Court a person acting with prudence and caution would have accepted. It is conceived that, save perhaps in the case where the freehold title is very well known, a trustee would not be justified in advancing trust money upon the security of a recently granted lease, but should require such length of title to the leasehold interest as afforded, from lapse of time and other circumstances, a presumption that the lease is subsisting and unimpeachable.

It is doubtful whether a power to lend on leasehold security authorises an investment on property held by underlease (see *in re Dive*, *Dive v. Roebuck*, 1909, 1 Ch. 328, 343). And a power to lend on "leasehold securities" would not justify trustees in advancing their trust moneys on a short term (see *Pince v. Beattie*, 9 Jur., N. S., 1119; *Cadogan v. Essex*, 2 Dr. 227; and *Townend v. Townend*, 1 Giff. 201, 211); and trustees ought not to make

advances on leaseholds clogged by onerous and unusual covenants and clauses of forfeiture.

Where trustees were "authorised and required" with the "consent and direction" of the tenant for life to lay out the trust moneys on "leasehold hereditaments" in some convenient place, it was held that it was imperative on the trustees, on the requisition of the tenant for life, to invest on leaseholds, and that they could not refuse to do so on the ground of the liabilities to be incurred by them on the covenants, they having by the terms of the trust instrument expressly contracted on the subject, but that they had a discretion to exercise as to value, title, and locality (*Beauclerk v. Ashburnham*, 8 Beav. 332).

Leasehold houses are, it seems, within the meaning of the expression "leasehold hereditaments" (see *Beauclerk v. Ashburnham*, *ante*).

Sub-section 3.—This is a re-enactment of Sub-section 3 of Section 4 of the Act of 1888.

Before the passing of the Act of 1888 the rule of equity was that trustees, empowered or directed to lay out trust money in the purchase of real estate, ought not to accept a title unless strictly marketable, and departure from it was only allowed where the title was substantially a safe holding one, and the acquisition of the particular property was of importance to the trust (*re Sheffield and Rotherham Railway Co.*, 1 Sm. & Giff. App. IV.), or where the property purchased was a large one, and the want of a marketable title extended only to small and outlying portions of it. The rule applicable to trustees having power to advance trust money on real or leasehold security was that in so doing they ought to see that the title to the property proposed as a security was a marketable one.

Prior to The Vendor and Purchaser Act, 1874, a title to real estate, to be a marketable one, must have gone back over a period of sixty years at the least; but the period of forty years has now been substituted by that Act, which, by its First Section, enacts as follows:—"In the completion of any contract of sale of land made after the Thirty-first day of December, One thousand eight hundred and seventy-four, and subject to any stipulations to the contrary in the contract, forty years shall be substituted as the period of commencement of title which a purchaser may require, in the place of sixty years, the present period of such commencement. Nevertheless, earlier title than forty years may be required in cases similar to those in which earlier title than sixty years may now be required."

As to the meaning of the word "land" in Acts of Parliament see Section 3 of The Interpretation Act, 1889 (52 & 53 Vict. c. 63).

Before the enactment comprised in Section 2 of The Vendor and Purchaser Act, 1874, in order to make a marketable title to leasehold

property (other than property held under a bishop's lease), it was necessary to show the title to the freehold as well as the title to the term.

It will be seen, therefore, that before the passing of The Trustee Act, 1888, trustees for purchase, in the absence of an express authority in their trust instrument, could not with safety purchase real estate under a contract containing stipulations restrictive of their right to require a title going back over a period of forty years at the least (*ex parte* the Governors of Christ's Hospital, 2 Hem. & M. 166, 168); and although on purchasing property held for a term of years they might have dispensed with the production of the freehold title, they were bound to require a title commencing with the original lease, and showing the subsequent assignments. Since the passing of the Act of 1888, however, trustees having authority to purchase or invest on the security of any property are no longer liable to be charged with breach of trust merely for having accepted a title shorter than that which they might legally have required. But as the title accepted must be such as, in the opinion of the Court, a person acting with prudence and caution would have accepted, trustees must still use circumspection in exercising trusts for purchase or investment, and would, it is conceived, be liable for accepting a title commencing at a recent date, save perhaps where the title was a very well known one, or, in the case of a purchase where the property was small and its possession of importance to the trust.

The word "property" in this Act includes "real and personal property, and any estate and interest in any property, real or personal" (see Section 50, *post*), and therefore extends, it is apprehended, to leaseholds, so that a trustee purchasing or investing on the security of property of that description would, where the term was of old creation, be justified in dispensing with the full title, provided that the creation of the term was shown, together with the mesne assignments for the past forty or fifty years.

Sub-section 4.—This sub-section is practically a re-enactment of Sub-section 4 of Section 4 of The Trustee Act, 1888.

The word "investment" in this sub-section extends, it is conceived, as well to investments in the purchase of as to investments on the security of property to which the section applies.

It will be observed that the retrospective force given to the Act by this sub-section is not to operate in respect to any investment made before the commencement of the Act, where an action or other proceeding was pending with reference thereto on the 24th day of December, 1888, the time when the Act of 1888 was passed and came into operation.

9. (1) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorised investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

Liability for loss by reason of improper investments.

(2) This section applies to investments made as well before as after the commencement of this Act, except where an action or other proceeding was pending with reference thereto on the Twenty-fourth day of December, One thousand eight hundred and eighty-eight.

Section 9.—This is a re-enactment of Section 5 of The Trustee Act, 1888, that section being repealed by the present Act (see Section 51 and Schedule).

A trustee is not entitled to the protection afforded by this section unless the investment which proves deficient was a proper investment at the time when made in all respects other than value (*in re Walker, Walker v. Walker*, 59 L. J., Ch 386).

The object of the section is to provide that when a trustee has advanced more money on mortgage of a property than was reasonably prudent, and the estate fails, then he is not to be chargeable with the whole, but only with so much as would have been a loss if the real value at the time of investment had been taken, and not the value the trustee put upon it (*in re Walker, Walker v. Walker, ubi supra*). Since the passing of the Act of 1888 the proper course, therefore, has been to value the security and to charge the trustees with any excess in the amount of the loan over the sum which ought properly to have been advanced in proportion to the value of the security at the time when the advance was made (see *Shaw v. Cates*, 1909, 1 Ch 389).

Where this section does not apply, and the security is deficient, the practice of the Courts is to order the security to be realised and to charge the trustees with the insufficiency (*Stickney v. Sewell*, 1 My. & Cr. 8; *Ingle v. Partridge No. 2*, 34 Beav. 411; *in re Whiteley, Whiteley v. Learoyd*, 33 Ch. D., at p. 354); and where in such a case a trustee who invests on an insufficient security retires, the new

trustee may realise the security without notice to the old trustee, and charge him with the deficiency (*in re Salmon, Priest v. Uppleby*, 42 Ch. D. 351).

Where the investment is on a security of an unauthorised description and loss arises, it seems that the trustees, when called upon to make good the loss, are entitled to have the security transferred to themselves (*in re Salmon, Priest v. Uppleby, ante*). But the rule does not apply where the *cestui que trust* is an infant, he being entitled to have the fund made good by the trustees, notwithstanding that the security cannot be transferred to them (*Head v. Gould*, 1898, 2 Ch. 250).

L., a trustee, advanced trust funds on a contributory mortgage, which was an unauthorised investment. He afterwards became bankrupt. The mortgagor commenced an action against L., and all others claiming through or under him, to set aside the mortgage on the ground of fraud. L.'s *cestuis que trust* compromised their claims in the action without the concurrence of L.'s trustee in bankruptcy. Held, that as L.'s *cestuis que trust* had adopted the improper investment they could not under the circumstances prove in L.'s bankruptcy for the whole amount of the trust fund, but that their remedy was a proof for the damages the trust estate had sustained by reason of the improper investment, and that the measure of damages was the difference between the total sum invested and the assessed value of the amount receivable under the compromise. The dictum of Kekewich, J., in *re Salmon, Priest v. Uppleby*, that where trust funds have been invested in a security, which is not merely insufficient but of a description not authorised by the trust, the trustee should have the opportunity or option of taking to the improper security on replacing the trust fund, being applied by the Court (*in re Lake, ex parte Howe's Trustees*, 1903, 1 K. B. 439).

Where in an action against trustees for breach of trust a sum is certified to be due from the defendants to the plaintiff, the acceptance by the plaintiff of a payment by one trustee by way of compromise in discharge of his liability does not operate as a release *pro tanto* of the others; consequently the plaintiff may prove in the bankruptcy of another trustee for the full amount of the certified debt without giving credit for the compromise (*Edwards v. Hood-Barrs*, 1905, 1 Ch. 20, and see *ante*, p. 22).

Where one member of a firm, being an express trustee, wrongfully concurs in the misappropriation by the firm of the trust fund, proof may be allowed both against the joint estate of the firm and the separate estate of the defaulting trustee; and the fact that the trust fund properly came in the first instance into the hands of the firm for a specific purpose, which the firm omitted to fulfil, makes no difference in this respect, neither does it make any difference that the trust was not express and that the member of the firm had not originally possession of the trust fund. And

it seems that the same principle must apply to every case in which there is a fiduciary relationship resting upon contract such as that of a promoter, agent, or director of a company (*in re P. Macfadyen, ex parte the Vizianagram Mining Company, Limited*, 1908, 2 K. B. 817).

Where the trustees of a settlement make an unauthorised investment, and then replace the fund with all accretions to the capital thereof, they are discharged as against remaindermen claiming under the settlement. And if in such a case the trustees pay to the tenant for life interest on the unauthorised investment at a rate higher than that which would have been produced by an unauthorised investment, the remaindermen can make no claim to have the excess of interest so paid treated as an accretion to the capital of the trust fund (see *Stroud v. Gwyer*, 28 Beav. 130; *in re Appleby*, 1903, 1 Ch. 565; *Chillingworth v. Chambers*, 1896, 1 Ch. 685; and *Slade v. Chaine*, 1908, 1 Ch. 522).

Sub-section 2.—It will be observed that the section has a retrospective operation, save where some action or other proceeding with reference to the investment was pending on the 24th day of December, 1888, the time when the Act of 1888 came into operation.

PART II.

VARIOUS POWERS AND DUTIES OF TRUSTEES.

Appointment of New Trustees.

Power of
appointing
new
trustees.

10. (1) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for the purpose of appointing new trustees by the instrument (if any) creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing, or being unfit or being incapable, as aforesaid.

(2) On the appointment of a new trustee for the whole or any part of trust property—

(a) The number of trustees may be increased; and

(b) A separate set of trustees may be appointed for any part of the trust

property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part; and

(c) It shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust; and

(d) Any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(3) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument (if any) creating the trust.

(4) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(5) This section applies only if and as far as a contrary intention is not expressed in the instrument (if any) creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(6) This section applies to trusts created either before or after the commencement of this Act.

Sections 10, 11, and 12 re-enact, with some slight verbal alterations, Sections 31, 32, and 34 of The Conveyancing Act, 1881; Section 5 of The Conveyancing Act, 1882; and Section 6 of The Conveyancing Act, 1892, and deal with the appointment of new trustees, and the vesting of the trust property consequent on such appointment.

Section 10.—Before examining in detail the provisions of this section it should be pointed out that the section, having replaced Sections 31, 32, and 34 of The Conveyancing Act, 1881, will be read in lieu of those sections in Section 3 of The Trustee Appointment Act, 1890 (which amends 13 & 14 Vict. c. 28, as extended by 32 & 33 Vict. c. 26). That Act relates exclusively to land acquired by trustees in connection with any society or body of persons, comprising several congregations or other sections or divisions or component parts associated together for any religious purpose. As that Act deals with topics not within the subject-matter of this book it would be out of place to further comment on it.

Dealing with the section in question it may be premised generally that persons proposed to be appointed as new trustees should—

1. Inquire what the trust property consists of and its mode of investment.
2. Ascertain what the trusts are.
3. Look into the deeds and documents relating to the trust.

(*Hallows v. Lloyd*, 39 Ch. D. 686; *Osborne v. Rowlett*, 13 Ch. D. 789; *Mortimer v. Ireland*, 6 Ha. 190; *Bostock v. Floyer*, L. R., 1 Eq. 26).

Sub-section 1.—The cases in which the powers conferred by this sub-section come into operation range themselves under six heads.

Where a trustee, either original or substituted, and whether appointed by a Court or otherwise—

- (1) Is dead.
- (2) Remains out of the United Kingdom for more than twelve months.
- (3) Desires to be discharged from all or any of the trusts or powers reposed in or conferred on him.
- (4) Refuses to act therein.
- (5) Is unfit to act therein.
- (6) Is incapable of acting therein.

The trustee may be—

- (i.) Original.
- (ii.) Substituted (a) by a Court; (b) or otherwise.

The definition of “trustee” in Section 50 includes an executor or administrator, and a trustee (not being a mortgagee) whose trust arises by construction or implication of law, as well as an express trustee, and it does not exclude the official trustees of charitable funds. But an executor as such cannot after probate be replaced or resign, though, if bankrupt, he can be restrained from acting further (*Bowen v. Phillips*, 1897, 1 Ch. 174).

The Court will not appoint a person to perform the duties of executors. An executor, as legal personal representative, has certain duties to perform which cannot be taken out of his hands. When, however, the estate is cleared by payment of debts and funeral and testamentary expenses, the Court either under its general jurisdiction, or under the Trustee Acts, has been in the habit of appointing trustees (*Eaton v. Daines*, 1894, W. N. 32; and *in re Willey*, 1890, W. N. 1, commenting on *in re Moore*, *McAlpine v. Moore*, 21 Ch. D. 778). In the latter case the duties for which the new trustees were appointed were duties in the nature of a trust; and though the decision *primâ facie* appears to be an authority for the proposition that the Court can appoint persons with the duties of executor, this view is not sustainable on a closer examination of the particular circumstances; the decision is explicable on the principle that the duties to be performed were really those of trustees, and is thus referable to the Court’s power to appoint new trustees.

By “original trustee” is meant a trustee nominated and appointed in or by the original document, whether will, settlement, or otherwise, or declaration of trust by word of mouth creating the trust.

The "original" trustee need not, however, in all cases be designated by name in the document creating the trust. In the case of *in re Waidanis, Rivers v. Waidanis* (1908, 1 Ch. 123), where W. by her will devised and bequeathed property to the person or persons who should at her death be trustees of her father's will. At her death all the trustees of her father's will and all the trustees appointed in their place were dead. The executors of the last survivor of the trustees so appointed had acted in the trusts of her father's will. It was held that these executors were at the testatrix's death trustees of her father's will, and were duly appointed trustees of her own will.

A "substituted trustee" is one appointed by the Court, or a trustee appointed by a person having a valid power of so doing, or may be one to whom the powers of trustee devolve by operation of law. This last case seems to be covered by the words "or otherwise," which occur in the section now under discussion.

1. *Where a Trustee is Dead.*

It should be borne in mind that where a sole trustee dies, notwithstanding any testamentary disposition, trust and mortgage estates (except copyholds or lands of customary tenure—Section 88 of 57 & 58 Vict. c. 46), by virtue of Section 30 of The Conveyancing and Law of Property Act, 1881, now vest in his personal representatives.

The necessity of appointing a new trustee may in some instances be obviated by a *cestui que trust* who is absolutely entitled obtaining a grant of letters of administration to himself (*re Ratcliffe*, 1899, P. 110).

2. *Where a Trustee Remains out of the United Kingdom for more than Twelve Months.*

The months here mean calendar months, in accordance with The Interpretation Act, 1889 (52 & 53 Vict. c. 63, Section 3).

This sub-section indicates a period which sets at rest any question as to what amount of absence is sufficient to justify the exercise of the power of appointing new trustees—a question which may still arise, when the persons in whom the power to appoint new trustees is vested are appointing, or where the Court is called on to exercise its power of appointing on the ground that a trustee is out of the jurisdiction (which is treated of hereafter), and on which the case of *Hutchinson v. Stevens* (5 Sim. 499) is a useful decision.

The twelve months must be consecutive and not interrupted by a period during which the trustee is in the United Kingdom. Thus one of two trustees purported to appoint a new trustee in the place of his co-trustee under the power conferred by this sub-section. The co-trustee had remained out of the United Kingdom for more than twelve months, *except for one week*,

when he was in London. It was decided that the event upon which the power arose had not happened, and that the appointment was bad (*in re Walker, Summers v. Barrow*, 1901, 1 Ch. 259). The Court has to find as a fact that the trustee did remain out of the United Kingdom for more than twelve months prior to the deed of appointment of the new trustee.

In deeds or wills the question often arises whether the power of appointing a new trustee arises when a trustee is abroad. What this actually means must be determined according to the facts in each case, as to which *in re Earl of Stamford, Payne v. Stamford* (1896, 1 Ch. 288), is a decision in point (see also *in re Moravian Society*, 26 Beav. 101; and *in re Arbib and Class's Contract*, 1891, 1 Ch. 601). A trustee who has gone abroad and remains there can be called on to resign (*O'Reilly v. Alderson*, 8 Ha. 101).

Where a trustee has been out of the United Kingdom for the period indicated (i.) the persons who are continuing to act as trustees have the power of appointing new trustees without the concurrence of a person who is ceasing to be a trustee by virtue of the appointment; (ii.) the subsequent provisions in Sub-section 4, which provide that the provisions "relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section," only include a retiring trustee when it can be shown that the retiring trustee is competent and willing to act in the exercise of the provisions of the section. As a rule, unless the retiring trustee expressly intimates his desire to join in the appointment of the new trustees, it would be wiser to assume that he is not so willing, and appoint without him (see also *in re Walker and Hughes' Contract*, 24 Ch. D. 698). The advantage of joining the outgoing trustee is that there is then documentary evidence of his desire to cease to be a trustee. This case (*re Walker and Hughes' Contract*) has been commented on and followed in *in re Boucherett, Barne v. Erskine* (1908, 1 Ch. 180).

3. *Where a Trustee Desires to be Discharged from all or any of the Trusts or Powers reposed in or conferred on him.*

This gives a statutory power of retiring, which previously all well-drawn forms of powers of appointing new trustees contained. The power can, of course, be excluded (though it would be unwise and unjust so to do), since by Sub-section 5 it applies only if and so far as a contrary intention is not expressed in the instrument.

A trustee should not part with his control over the trust fund until the new trustee (if any) is properly appointed (*Pearce v. Pearce*, 22 Beav. 248). A trustee must not retire to enable others more pliant than himself to undertake it; if he does he may be liable for their breaches of trust. But in order to make a retiring trustee liable for a breach of trust committed by his successor it must be

shown, and that clearly, that the very breach of trust which was in fact committed was not merely the outcome of the retirement and new appointment, but was contemplated by the former trustee when such retirement and appointment took place (*Head v. Gould*, 1898, 2 Ch. 250, and cases there cited). The retiring trustee need not be party to the deed appointing the new trustee, though it is usual for him to be so to put on record his desire to retire (see *re Norris*, *Allen v. Norris*, 27 Ch. D. 333; and *re Coates and Parsons*, 34 Ch. D. 370). An executor as such cannot resign or retire, but after administration his duties merge into those of a trustee, and he may usually resign as trustee (see *Dix v. Burford*, 19 Beav. 409; *Phillips v. Munnings*, 2 My. & Cr. 309; *Noble v. Brett*, 24 Beav. 510, 511; *Stephens v. Venables* No. 1, 30 Beav. 625; *Ballard v. Marsden*, 14 Ch. D. 374; *re Smith, Henderson-Roe v. Hitchins*, 42 Ch. D. 303; *Crawford v. Forshaw*, 43 Ch. D. 646; *Eaton v. Daines*, 1894, W. N. 32; and *in re Willey*, 1890, W. N. 1).

An executor who has obtained probate may, however, with the sanction of the Court transfer his testator's estate to the Public Trustee for administration, either solely or jointly with the continuing executors, if any. And the liability of the executor ceases from the moment of such transfer (see Sub-section 2 of Section 6 of The Public Trustee Act, 1906, *post*).

It is clear that a trustee can retire from part of the trust—that is, where the circumstances are such as to fall within Sub-section 2 (b) of this section: that is to say, when any part of the trust property is held on trusts distinct from those relating to any other part of it. The remarks of Kay, J., in *re Moss's Trust* (37 Ch. D. 513), show that under the Trustee Acts the Court had power to allow trustees to retire from a part of the trusts which is quite distinct from the other part of the trusts, and without requiring the appointment of a new trustee to act in the trusts of the residue. This was before The Conveyancing and Law of Property Act, 1892 (Section 6 of 55 & 56 Vict. c. 13), which enabled trustees, irrespective of the powers of the Court, to retire. Section 10, Sub-section 2 (b), of the present Act (The Trustee Act, 1893), however, replaced Section 6 of the Act of 1892, and in the circumstances there mentioned the proposition above stated holds good.

4. *Where a Trustee Refuses to Act therein.*

Refusal to act may be either *before assenting* to become a trustee or *afterwards*. In the former case it is the same as disclaimer, and this sub-section therefore applies to the case of a disclaimer. It is true there has been no decision clearly laying down that "refusal" does include disclaimer; but in *D'Adhemar v. Bertrand* (35 Beav. 19) it was assumed that the similar section in Lord Cranworth's Act (Section 27) did comprise disclaimer. Up to the instant of disclaimer the estate vested in the trustee remains in him and disclaimer of the

powers of trustee will operate to disclaim the estate without any formal act (*re* Birchall, *Birchall v Ashton*, 40 Ch. D. 436). No express assent is necessary to vest the estate in a trustee; the mere appointment does this; but obviously no person is bound to accept such an onerous position, and may decline it, even, if, for instance, he has before the death of a testator agreed to be a trustee of his will. A striking instance of property vesting without even knowledge is to be found in *Standing v. Bowring* (31 Ch. D. 282) and the cases there cited. Disclaimer may be evidenced by conduct without express declaration. But it is advisable that it should be evidenced by writing, usually a deed, though this is not necessary. The case of *re Birchall, Birchall v. Ashton* (40 Ch. D. 436) shows that even where land is devised to a trustee conduct which amounts to a disclaimer of the office of trustee will also amount to a disclaimer of the legal estate (see also *Smyth v. Smyth*, 6 Barn. & Cress. 112; *Doe v. Harris*, 16 M. & W. 517).

It is particularly advisable to evidence by deed the disclaimer of a devise in trust of land, as the disclaimer forms a link in the title. A trustee cannot disclaim part of a trust (*re* Lord and Fullerton's Contract, 1896, 1 Ch. 228; and see note to Section 11, p. 93). In that case a testator had devised his real estate, and bequeathed his personal estate to certain trustees, one of whom subsequently purported by deed poll to disclaim and renounce the office of trustee and executor without the bounds of the United States of America. It was decided that it was incompetent for one of the trustees to say that he would accept the trusts as to foreign property, but would have nothing to do with the English property. As pointed out in the case in question, any difficulty of administration can be obviated by the testator appointing two sets of trustees, one for the English property, the other for the foreign property. In this connection see also note to Sub-section 2 (*b*) of this section, p. 88.

In connection with the subject of disclaimer, reference may here be made to Section 52 of The Conveyancing Act, 1881, coupled with Section 6 of The Conveyancing Act, 1882, under which one trustee may disclaim a power without vitiating the exercise of it by the remaining trustees, in whom it will vest and be validly exercisable, thus putting disclaimer of a power on the same footing as disclaimer of an estate.

Put shortly, every person appointed a trustee may disclaim the trust, either by writing with or without seal or by word of mouth, or by conduct showing an intention to disclaim, but a disclaimer must be of the whole trust, and must be made within a reasonable period, and before the trustee has done any act showing an intention to accept the trust.

A disclaimer by one of two or more persons appointed co-trustees vests the trust property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust. A disclaimer by a person appointed sole trustee reverts the

trust property in the settlor or his representatives, and renders him or them subject to the obligation of the trust.

A married woman may, since the 1st January, 1908, disclaim any estate or interest in land "in like manner as if she were a *feme sole*." This appears to be the effect of The Married Women's Property Act, 1907, which came into operation at that date, and enacts (Section 1, Sub-section 1): "A married woman is able without her husband to dispose of or join in disposing of real or personal property held by her solely or jointly with any other person as trustee or personal representative in like manner as if she were a *feme sole*."

By Section 1, Sub-section 2, this enactment has retrospective operation, since all "such dispositions," *i.e.* by a *feme covert* without her husband, made after the 31st December, 1882, whether before or after the commencement of this Act, are rendered valid and confirmed. Previous to this Statute a married woman had to disclaim in manner provided by Section 7 of The Real Property Act, 1845 (8 & 9 Vict. c. 106).

5. *Where a Trustee is Unfit to Act therein.*

As to the exact nature of the unfitness which will authorise the exercise of the power of appointment there are not many decisions, for the obvious reason that in cases where it is proposed to remove a trustee out of Court for unfitness the trustee will usually retire of his own accord, and then the case falls under the head of the trustee being desirous of retiring, and so an application to the Court is avoided. It is abundantly clear that for bankruptcy the Court can itself, under Section 25 of this Act, remove a trustee, though it depends on the circumstances of each particular case whether or not the Court will exercise the jurisdiction (*in re Dawson's Trusts*, 1899, W. N. 134; see also *Scott v. Beek*, 4 Pr. 316; and *Dowd v. Hawtin*, 19 Ch. D. 61). This much, however, is clear, that bankruptcy is unfitness, and a trustee can be called upon to resign who is bankrupt (see *re Roche*, 2 Dru. & War. 287; *re Adam's Trusts*, 12 Ch. D. 634, at p. 639; *re Hopkins*, 19 Ch. D. 61; *re Barker's Trusts*, 1 Ch. D. 43; *Bowen v. Phillips*, 1897, 1 Ch. 174; and Section 25, Sub-section 1, of this Act). As to the principles which will guide the Court in exercising its jurisdiction of removing a trustee for unfitness—a jurisdiction of a delicate character—the case of *Letterstedt v. Broers* (L. R., 9 App. Ca. 371) is useful.

The result appears to be that where it is clear that the Court would exercise its inherent jurisdiction of removing a trustee for "unfitness" it would be equally safe for the person having the power of appointment as indicated by this section to exercise it, and to require and insist on the retirement of a trustee who is clearly unfit. If he resist and render a resort to the Court necessary he may have to pay the costs so occasioned.

6. *Where a Trustee is Incapable of Acting therein.*

Incapacity may arise—

- (i.) From physical infirmity.
- (ii.) From mental infirmity.

The incapacity (if any) arising from status—*i.e.* infancy or marriage—is not within the purview of this section. The distinction between physical and mental infirmity is of importance when the question arises as to whether the Chancery Division or the Lunacy authorities have jurisdiction to remove a trustee for the cause mentioned, and to appoint another or others. In ordinary cases the infirm trustee would retire, or be treated as having retired; but to avoid any doubt resort can be had to the Court, under Section 25 of the Trustee Act, for the appointment of new trustees, and then the question of jurisdiction arises. If the incapacity is from *physical infirmity*, the Chancery Division is the right tribunal to go to under that section (*in re* Weston's Trusts, 1898, W. N. 151); if mental, the Lunacy authorities have to be applied to under The Lunacy Act, 1890. It appears, however, that the Chancery Division can appoint a new trustee in the place of a sole surviving trustee who is a lunatic, though not so found (*in re* M., 1899, 1 Ch. 79). But if a vesting order is wanted the Lunacy jurisdiction must be resorted to (*idem*, and also *in re* R., 1906, 1 Ch. 730, cited below). Shortly stated, the law appears to be as follows: If a trustee is lunatic (whether *so found* or *not so found*), and it is desired to replace him by a new trustee, then the following cases arise:—

- (i.) Assuming there is an express power of appointing new trustees in the instrument creating the trust, that power can be exercised and a vesting declaration made under Section 12 of the Trustee Act.
- (ii.) If there is no express power in any person other than the continuing trustees, the latter can appoint (Section 10, Sub-section 1), and a vesting declaration be made under Section 12 (*re* Elizabeth Blake, 1887, W. N. 173).
- (iii.) If there is no person who can appoint, then Section 25 of the Act must be resorted to (*in re* M., 1899, 1 Ch. 79), and a new trustee appointed by the Court; but if a vesting order is also required the Lunacy jurisdiction will, it seems, have to be resorted to, and not that of the Chancery Division (see *ibidem*).
- (iv.) If the trustee is a criminal lunatic, the Lunacy Act of 1890 giving no jurisdiction to make a vesting order, the old jurisdiction under Section 5 of The Trustee

Act, 1850, is preserved by the saving clause in Section 342 of the former Act, and the Court in Lunacy will exercise that jurisdiction and make a vesting order under the Act of 1850. In the case of *in re R.*, 1906, 1 Ch. 730, at p. 739, will be found the form of order made, the heading of the order being as follows:—

“In the Matter of the Trusts of an Indenture of Settlement,” &c.

“And in the Matter of R., a criminal lunatic and a person of unsound mind not so found by inquisition.”

“And in the Matter of The Trustee Act, 1850, and in the Matter of The Lunacy Acts, 1890 and 1891.”

The case of the donee of the power of appointment being a lunatic is discussed below in the note on who may appoint new trustees.

Marriage.—Marriage is clearly not such an incapacity as is here intended, *i.e.* as incapacitating a woman from acting in the trust. A married woman can—under The Married Women’s Property Act, 1882 (45 & 46 Vict. c. 75), by virtue of Section 1, Section 18, and Section 24 of that Act—act as a trustee (see *re Hawksworth*, 1887, W. N. 113); but in directing payment of money to a married woman, even as trustee, the words “on her separate receipt” should be added (see the case just cited). While it is perfectly clear that there is nothing to prevent a married woman being a trustee, and that coverture is not an incapacity, the question whether, when real property is vested in a *feme covert* trustee, it is necessary that she should acknowledge a deed conveying the property has been set at rest by The Married Women’s Property Act, 1907, which enables her to dispose of real or personal property held by her solely or jointly with any other person as trustee or personal representative in like manner as if she were a *feme sole*. Previously to this Act it had been thought that the provisions of The Married Women’s Property Act, 1882, related only to property to which the married woman was *beneficially* entitled (see Key & Elphinstone’s *Precedents in Conveyancing*, 7th ed., vol. i., p. 235, and also p. 109), and this view was held to be correct in *re Harkness and Allsopp’s Contract* (1896, 2 Ch. 358). But the Act of 1907 was passed to alter the law as laid down in this case, and therefore in future where an interest in land is vested in a married woman (whenever married), and whether in her own right or *as a trustee*, no deed acknowledged is necessary. Under Section 6 of The Vendor and Purchaser Act, 1874, if the married woman is a bare trustee within that section (see *re Docwra, Docwra v. Faith*, 29 Ch. D. 693), she could

always have conveyed without deed acknowledged. This section was repealed by Section 51 of the present Act, and re-enacted in Section 16 of this Act.

The case just cited was one where property vested in a *feme covert* trustee had been sold and an order made for purchase money to be paid into Court.

A married woman who was a mortgagee and had been paid off was held a bare trustee, and therefore could convey without deed acknowledged (*re Brooke and Fremlin's Contract*, 1898, 1 Ch. 647). This was followed *in re West and Hardy's Contract* (1904, 1 Ch. 145), and also *in re Howgate & Osborne's Contract* (1902, 1 Ch. 451).

According to the present practice the appointment of a properly qualified unmarried woman to be a trustee by the Court is not limited to cases in which no other trustee can be found (*in re Dickinson's Trust*, W. N. 1902, p. 104).

A point of some importance cognate to the questions above discussed is whether since The Married Women's Property Act, 1882, where two or more persons, one of whom is a married woman, advance moneys by way of mortgage upon a recital that the advance is made out of moneys belonging to them on a joint account, it is necessary or not on a transfer of the mortgage either for the husband of the married woman to concur in the conveyance or for her to acknowledge it under The Fines and Recoveries Act. Farwell, J., has decided it is not (*in re West and Harvey's Contract*, 1904, 1 Ch. 145, following *in re Brooke and Fremlin's Contract*, 1898, 1 Ch. 647). While this decision may be doubted as not being in consonance with the law as it then stood, having regard to *in re Harkness and Allsopp's Contract* cited above, the point could not arise in the case of such a transaction since The Married Women's Property Act, 1907.

Infancy.—The position of an infant appointed a trustee is peculiar. Infancy is only a disqualification *sub modo*, and it is clear that appointing an infant a trustee does not render the appointment bad; but he cannot exercise any power which requires the application of prudence and discretion (*Jevon v. Bush*, 1 Vern. 342). Where the Court has been asked to appoint a new trustee in the place of an infant trustee it has done so without prejudice to any application by the infant to be restored to the trusteeship on coming of age. It is difficult to see in what manner the power could be exercised by a private person; hence this section cannot apply to the case of incapacity arising from infancy, and an application to the Court would under some circumstances be necessary (*re Brunt*, 1883, W. N. 220; and *re Tallatire*, 1885, W. N. 191), as for instance, if it was desired to sell the estate (see also *re Skelmerdine*, 33 L. J., Ch. 474).

Person to exercise power.—The section next deals with the persons who can exercise the power of appointment: “Then the person or persons nominated for the purpose by the instrument (if any) creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may,” &c.

Thus the persons having the power of appointment are—

- (i.) The person or persons nominated by the instrument (if any) creating the trust; or,
- (ii.) The surviving or continuing trustees or trustee for the time being; or,
- (iii.) The personal representatives of the last surviving or continuing trustee.

(i.) *The Person or Persons nominated by the Instrument (if any) creating the Trust.*

The whole of this section is subject to Sub-section 5, which provides that it “applies only if and as far as a contrary intention is not expressed in the instrument (if any) creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.” As to what is “a contrary intention” within the meaning of this sub-section see note to Sub-section 5 of this section, *post*, p. 91.

The words “*person or persons nominated for the purpose of appointing new trustees by the instrument creating the trust.*” refer to the person or persons nominated for the purpose of appointing new trustees in the particular event which has happened. Where, therefore, by a trust instrument persons named were empowered to appoint new trustees in certain specified events, including the event of a trustee becoming incapable, but not including the event of a trustee becoming unfit, and one of the trustees became unfit but not incapable, the appointment of a new trustee ought to be made, not by the persons nominated in the trust instrument, but by the continuing trustees under the provisions of the Act (*re Wheeler and De Rochow*, 1896, 1 Ch. 315). The unfitness in the case was bankruptcy.

Where the power of appointing new trustees is vested in a tenant for life, and he has alienated his life estate, the power is not affected (*Hardaker v. Moorhouse*, 26 Ch. D. 417; *Holdworth v. Goose*, 29 Beav. 111; *Warburton v. Farn*, 16 Sim. 625; *Alexander v. Mills*, 6 L. R., Ch. 124; *Eisdell v. Hammersley*, 31 Beav. 255; see also *re Bedingfield and Herring’s Contract*, 1893, 2 Ch. 332). These cases lay down the principle that the alienation of a beneficial interest does not affect the power of appointment.

The pendency of an administration action does not take away the power of appointing new trustees; but the power should be exercised subject to the approval of the Court (*per* Jessel, M. R., in *Tempest v. Lord Camoys*, 21 Ch. D., at p. 578; *re* Gadd, 23 Ch. D. 134; *Thomas v. Williams*, 24 Ch. D. 558). It will usually be found convenient to obtain a direction in the pending proceeding sanctioning the appointment that the trustee in whom the power of appointment is vested proposes to make (*re* Norris, *Allen v. Norris*, 27 Ch. D. 333): the appointment is not invalid without this sanction. *Cradock v. Witham* (1895, W. N. 75) is an instance of a power of nomination of new trustees becoming extinguished by desuetude.

The phrase "*the instrument (if any) creating the trust*" shows that the powers of this section apply to trusts, whether created by writing or not, which is made more evident by the definition in Section 50, where "trust" is defined as including "implied and constructive trusts." The term "instrument" includes a deed of any kind, will, charter, Act of Parliament (see Section 50 of this Act), and, it is apprehended, a simple declaration of trust, &c., in writing, even though not under the hand and seal of the creator of the trust.

"Or if there is no such person, or no such person able and willing to act."—Even if there are persons nominated to appoint, yet if they decline, or cannot agree to appoint, as where husband and wife are living apart and refuse to concur in appointing a new trustee, the power will be exerciseable by the other persons mentioned in the section (*re* Sheppard's Settlement Trusts, 1888, W. N. 234). If the nominee is a lunatic, the Judge in Lunacy has jurisdiction under Sections 128 and 129 of The Lunacy Act, 1890, to authorise the committee of the lunatic to exercise the power on his behalf by appointing persons named in the order to be new trustees of the settlement (*in re* Shorbridge, 1895, 1 Ch. 278).

(ii.) *The Surviving or Continuing Trustee or Trustees for the time being.*

By "continuing trustee" is meant one who is to continue to act in the trusts after the completion of the appointment (*re* Coates and Parsons, 34 Ch. D. 370). and does not include a trustee who has made up his mind to retire (*re* Norris, *Allen v. Norris*, 27 Ch. 333), unless he is willing to act for the purpose of filling up the intended vacancy. "Continuing trustee" does then include such a retiring trustee, and he is entitled to join in appointing if he so desires, since Sub-section 4 of the section now under discussion enacts that "the provisions of this section . . . relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section." There is, however, no necessity for his concurring if he does not wish to do so (*re* Norris

Allen v. Norris, 27 Ch. D. 333). *In re Coates and Parsons* (34 Ch. D. 370) is a decision to the same effect. There the appointment of a new trustee in the place of one who had been abroad for more than twelve months was not invalid because that trustee had not joined in making the appointment.

In *Cradock v. Witham* (1895, W. N. 75) it had not been known for many years who was the heir of the last surviving nominor (the power being vested in him), and it was held that the surviving and continuing trustees could appoint new trustees.

Re Parker's Trusts (1894, 1 Ch. 707) shows that the power here given to the surviving and continuing trustees or trustee does not enable a sole surviving trustee by his will to exercise this power by appointing new trustees of the original trust, but it also shows that the general executors of the sole surviving trustee's will are the personal representatives of the last surviving trustee, and can themselves appoint new trustees. This is in consonance with the principles of law as regards the chain of representation, which are founded on the consideration of the special confidence and actual appointment of the deceased, thus permitting an executor to transmit that power to another in whom he has equal confidence; and so long as the chain of representation is unbroken by any intestacy the ultimate executor is the representative of every preceding executor (see *Williams on Executors*, 9th ed., p. 204). In the case mentioned the sole surviving trustee of a will by his will appointed general executors, and also purported to appoint special executors for the purpose of executing in continuation to himself the trusts of the will of the original testator. The general executors obtained a grant of probate of the will of the trustee to themselves as "general executors" without any reservation of power to the special executors to come in and prove, and proceeded by deed to appoint two persons to be trustees of the will of the original testator. Subsequently probate of the will of the trustee limited to the trust estates of the original testator was granted to the persons named as special executors. It was held that the general executors were "the personal representatives" of the last surviving trustee within the meaning of the Act, and the deed executed by them was a valid appointment.

This Statute imposes no obligation, either on a continuing sole trustee or the personal representatives of a deceased trustee, to appoint new trustees (*Peacock v. Colling*, 33 W. R. 528; *re Sarah Knight's Will*, 26 Ch. D. 82).

But such representatives must not be vexatious in their conduct, or take such a line as to necessitate costly proceedings to the trust estate; if they do they run the risk of being mulcted in the costs (see *re Sarah Knight's Will*, *ante*).

It is further to be noticed that the Court has no jurisdiction to appoint new trustees where the sole survivor is himself desirous of appointing new trustees, even if the application be supported

by a majority of the beneficiaries and the sole surviving trustee has no beneficial interest (*re Higginbottom*, 1892, 3 Ch. 132). This case was a decision on Section 31 of The Conveyancing Act, 1881, but as that section is replaced by this section of the present Act the same construction would apply

(iii.) *The Personal Representatives of the Last Surviving or Continuing Trustee.*

This would include the executor of such a trustee and the administrator of such a trustee who had died intestate, but not the administrator of the executor of a last surviving trustee who is not the personal representative of the last surviving trustee, original or substituted.

It is clear that a personal representative of a deceased trustee has an absolute right to decline to accept the position and duties of trustee if he chooses (*in re Benett*, *Ward v. Benett*, 1906, 1 Ch. 216, see p. 225), nor can such a representative be called on to exercise his undoubted rights of retainer against the assets of his testator in favour of the *cestui que trust* of the trustees (see *re Shafte*, 29 Ch. D. 247, and the remarks of Kekewich, J., in *re Parker's Trusts*, 1894, 1 Ch. 707, at p. 721). The representatives of a deceased trustee are not bound, even at the request of the *cestui que trust*, to exercise the power of appointing new trustees, and their refusal to do so is not a sufficient reason for ordering them to pay the costs of a petition for such appointment (*re Sarah Knight's Will*, 26 Ch. D. 82). Where powers are continued to the trustees or trustee for the time being of an instrument, new trustees, when appointed, must be appointed in the place of the original trustees, *in re Morton v. Hallett*, 15 Ch. D. 143; see also *in re Cunningham and Frayling*, 1891, 2 Ch. 567, which case is useful on the question of the devolution of powers of trustees, for co-heiresses of a last surviving trustee were there held trustees for the purpose of appointing new trustees.

It may be convenient to state here the chain of representation to a testator.

These rules are as follows (Williams on *Executors*, Part I., Book III., c. 4, p. 206, 9th ed., and Brickdale and Sheldon's *Land Transfer Acts*, 2nd ed., p. 251):—

- (a) Where one of several executors dies after probate the representation to the estate of his testator survives to the surviving executors.
- (b) Where a sole surviving executor or a sole executor dies after probate, leaving a will and appointing an executor, the whole representation devolves on such last executor if he prove. *Secus*, if the executor of the executor renounces or does not appear when cited.

- (c) When a sole surviving executor or a sole executor dies after probate intestate his administrator does not represent the testator, but letters of administration with the will of the testator annexed must be taken out to the effects (and now, also, to the real estate) of the testator left unadministered.
- (d) Where one of two administrators dies the survivor represents the estate of the intestate.
- (e) Upon the death of a surviving administrator or of a sole administrator he can transmit no authority to his representative, and therefore, whether he die testate or intestate, letters of administration must be taken out to the effects (and now to the real estate) of the original intestate left unadministered.

As to the practice in the Probate Division in granting administration for the purpose of a conveyance by a trustee who has died see *in re Butler* (1898, P. 9). By virtue of Section 16 of The Probate Act, 1858, whenever an executor dies without having taken probate his right in respect of the executorship ceases, and the representation to the testator goes as if such person had not been appointed executor; hence the sole acting executor would have the power of appointing new trustees (*re Boucherett*, *Barne v. Erskine*, W. N., 1908, 1 Ch. 180).

Who can be Appointed as New Trustees.—By empowering the appointor to appoint “another person or other persons to be a trustee or trustees” the Statute implies that the appointor ought not to appoint himself (see *re Skeats’s Settlement*, *Skeats v. Evans*, 42 Ch. D. 522; *in re Newen*, *Newen v. Barnes*, 1894, 2 Ch. 297, at p. 308; and, generally, as to who should be appointed see *Lewin On the Law of Trusts*, 9th ed., pp. 748-9, and notes on Section 25 *post*, p. 158).

It may be laid down that the person who exercises a power of appointing new trustees should have regard to the principles followed by the Court when appointing new trustees, and the power must be exercised properly and fairly (*re Skeats’s Settlement*, *Skeats v. Evans*, *ante*; *Webb v. Earl of Shaftesbury*, 7 Ves. 487; *Tugden v. Crossland*, 3 Sm. & Giff. 192; *Raikes v. Raikes*, 32 Beav. 403). It seems quite clear, as above stated, that the appointor should not appoint himself if he is a beneficiary, unless the language of the instrument creating the power allows this to be done. There is not the same objection if the power is not restricted to the appointment of “another person or other persons to be a trustee or trustees” (*Montefiore v. Guedalla*, 1903, 2 Ch. 723). In *re Newen*, *Newen v. Barnes* (1894, 2 Ch. 297), *Kekewich, J.*, held that “no trustee having a fiduciary power of appointing trustees can exercise that

power by appointing himself either alone or together with any other person." In *in re Sampson*, *Sampson v. Sampson* (1906, 1 Ch. 435), it is laid down that the person making the appointment cannot validly appoint himself, either alone or jointly with any other person; but it is to be noticed that the Court in that case, while declining to confirm the appointment as bad, actually appointed under its own general powers the same persons as trustees. In any event it is the duty of the outgoing trustee to satisfy himself of the fitness of the new one. Where there is a life estate created by the trust it is improper to appoint as trustee the solicitor of the tenant for life (*re Kemp's Settled Estates*, 24 Ch. D. 485). The appointment of the solicitor of the tenant for life as trustee is not one which the Court itself would make (*Earl of Stamford, Payne v. Stamford*, 1896, 1 Ch. 288).

Where, however, persons whom the Court would not appoint as trustees are appointed outside the Court, such appointment is not necessarily invalid (*in re Norris*, *Allen v. Norris*, 27 Ch. D. 333, 341; *Reid v. Reid*, 30 Beav. 388; and *Forster v. Abraham*, L. R., 17 Eq. 351).

The Public Trustee may now be appointed as a new trustee or as an additional trustee of any will or settlement or other instrument creating a trust in the same cases, and in the same manner, and by the same persons, as if he were a private trustee, with this addition, that, though the trustees originally appointed were two or more, the Public Trustee may be appointed sole trustee (see Section 5 of The Public Trustee Act, 1906, *post*).

Trustees who are desirous of retiring, and have a power of appointing new trustees vested in them, ought not, however, to have resort to an appointment of the Public Trustee until they have made every effort to overcome any difficulty which has arisen (*in re Hope Johnstone's Settlement*, 25 T. L. R., p. 369).

And where one of two trustees with the usual power of appointing new trustees vested in them, being desirous of retiring, applied to his co-trustee to concur with him in appointing the Public Trustee in his place to act jointly with such co-trustee as the continuing trustee, and the co-trustee expressed his willingness to appoint a new trustee but declined to appoint the Public Trustee, it was held, on the application of the retiring trustee and three of the beneficiaries (those who had vested interests) by originating summons asking that the Public Trustee might be appointed in the place of the retiring trustee, and that the continuing trustee might bear his own costs of the application, that the continuing trustee having acted in good faith was entitled to his costs (*in re Kensit*, W. N., 1908, p. 235).

By Writing.—It is to be noticed that whatever the nature of the trust, whether created by instrument or not, the power of appointing new trustees must be exercised "by writing," and,

though not apparently necessary, it is usual and proper that it should be by deed; but this does not enable a sole surviving trustee to exercise the power by his will (*re Parker's Trusts, ante*). "Writing," by The Interpretation Act, 1889, means any mode of representing or reproducing words in a visible form.

As to the rectification by fresh appointment of an invalid or ineffectual appointment of new trustees see *Miller v. Priddon* (1 D. G. M. & G. 335).

Sub-section 2.—On the appointment of a new trustee for the whole or any part of the trust property—

(a) *The number of trustees may be increased.*

By reason of Section 1, Sub-section 1 (b), of The Interpretation Act, 1889 ("words in the singular shall include the plural, and words in the plural shall include the singular"), Paragraphs (a), (b), (c), and (d) of this sub-section apply also on the appointment of new trustees.

The power of increasing the number of trustees only arises when an appointment is being made to supply a vacancy in the trusteeship, unlike the power conferred on the Court by Section 25 of this Act, which is a re-enactment of Section 32 of The Trustee Act, 1850, and can be exercised even though there is no vacancy (*re Gregson's Trusts*, 34 Ch. D. 209; and *re Brackenbury's Trusts*, L. R., 10 Eq. 45). As to reducing the number of trustees see notes to Section 11, *post*, p. 93. The whole of the provisions of this section apply only if and as far as a contrary intention is not expressed in the instrument (if any) creating the trust, and are to have effect subject to the terms of that instrument and to any provisions therein contained.

(b) *A separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part.*

There had been conflicting decisions, both of puisne Courts, on the meaning of Section 5 in The Conveyancing Act, 1882, repealed by this Act and replaced by this sub-section; and, according to the later of these cases (*Savile v. Couper*, 36 Ch. D. 520), the section so repealed authorised the appointment of a separate set of trustees for a part of the trust property held on distinct trusts only when an appointment was being made of new trustees of the whole property. In *re Paine's Trusts* (28 Ch. D. 725) was an

application to the Court under the Trustee Acts and The Conveyancing Act, 1882, Section 5, and it had there been decided contrary to the view which was subsequently expressed in *Savile v. Couper*. But all doubt was set at rest by the enactment of Section 6 of The Conveyancing and Law of Property Act, 1892 (55 & 56 Vict. c. 13), which enabled trustees to be appointed for separate parts of the property, though no trustee be appointed of the other parts. That section has been repealed by this Act, and the sub-section now under discussion replaces it.

The effect of this section is to permit the appointment of a new set of trustees for a separate part of the trust property, from the trusts of which the continuing trustees of the other portion of the property are virtually retiring. This was always permissible on an application to the Court under the Trustee Acts (Section 32 of The Trustee Act, 1850), as pointed out by Kay, J., in *re Moss's Trusts* (37 Ch. D. 513). That section is now repealed and re-enacted in Section 25, Sub-section 1, of the present Act; but in addition there is the statutory power conferred by the section now under discussion exercisable without resort to the Court. The jurisdiction under the Trustee Acts was exercised in *re Cotterill's Trusts* (1869, W. N. 183); *re Cunard's Trusts* (27 W. R. 52); and *re Moss's Trusts* (37 Ch. D. 513).

The section also applies to cases where the trusts of portions of the estate may be separate for a time, but eventually coalesce (*re Heatherington's Trusts*, 34 Ch. D. 211).

Where real or leasehold property is given to trustees upon distinct trusts as to separate portions, with a general power of sale over the whole, it is, perhaps, doubtful whether the power could be exercised by new trustees appointed for a part of the property only.

- (c) *It shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust.*

In appointments by the Court it is clearly the practice not to discharge a trustee unless there is another appointed to take his place, except when the trust is virtually at an end. Thus, where one of three trustees is a lunatic, the Court will not appoint the other two trustees to carry out the trust in the place of the three (*in re Aston*, 23 Ch. D. 217; *in re Martyn*, 26 Ch. D. 745; *in re Lamb's Trust*, 28 Ch. D. 77; *Davies v. Hodgson*, 32 Ch. D. 225; *in re Gardiner's Trusts*, 33 Ch. D. 590). The Court will only

deviate from this rule, and make such an appointment, when the trustees have no other duty to perform than to distribute a fund which is immediately divisible (*in re Martyn*, cited above). It will adhere to the ordinary rule if there is a continuing trust as regards even a relatively small part of the trust fund. But where one of four trustees of a will had been found lunatic by inquisition, the Court made an order vesting the estate in the other three trustees, although the number of trustees was thereby diminished (*in re Leon*, 1892, 1 Ch. 348). So, too, where one of four trustees was an absconding bankrupt the same thing took place (*re Lees' Settlement Trusts*, 1896, 2 Ch. 508; so, too, in *re Fitzherbert's Settlement Trusts*, 1898, W. N. 58).

(d) *Any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees shall be executed or done* (see Section 12, *post*).

If an assurance or thing requisite for vesting the trust property were not executed, the new trustees would still, it is apprehended, be the trustees, the old ones in whom the legal estate in the property remained vested being bare trustees, and liable at any moment to be called on to transfer the property to the new ones. The next sub-section (3) makes this quite clear. In most cases a vesting declaration, except in regard to special kinds of property, will be the means of assurance adopted (see Section 12, *post*).

Sub-section 3.—Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise vested in him, shall have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument (if any) creating the trust.

This sub-section is merely for the purpose of bridging over the period that must frequently and inevitably elapse before all the proper assurances for vesting the trust property in the new and continuing trustees have been carried through, and permits the trustees to act as though their appointment were complete, and to have all the powers and authorities of original trustees before the actual vesting has taken place. The effect of the similar section in The Conveyancing Act, 1881 (Section 31), is discussed in *Mara v. Browne* (1896, 1 Ch., at p. 213).

Sub-section 4.—The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

This sub-section enacts that, for the purpose of appointing a new trustee in the place of a dead trustee, one who dies in the lifetime of

a testator comes within the section, though in such a case his personal representative could not appoint a new trustee as the personal representative of a deceased trustee (*Nicholson v. Field*, 1893, 2 Ch. 511; following *re Ambler's Trnsts*, 59 L. J. 210; and see *re Orde*, 24 Ch. D. 271).

The case of a refusing or retiring trustee who is willing to concur in appointing a new trustee has been already dealt with under notes to (ii.) on page 83.

Sub-section 5.—*This section applies only if and as far as a contrary intention is not expressed in the instrument (if any) creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.*

A mere enumeration of certain events upon which the power is to arise does not exclude the power arising in the other events mentioned in the Statute (*Cecil v. Langdon*, 28 Ch. D. 1; *re Coates and Parsons*, 34 Ch. D. 370; and *re Walker and Hughes's Contract*, 24 Ch. D. 698). Nor is any contrary or other intention within the meaning of this section expressed by the deed by reason of the power being vested in nominors (*Cradock v. Witham*, 1895, W. N. 75, where it was held that a power to nominors given in the deed had lapsed).

The statutory power of appointment must be resorted to where there is a *casus omissus* in the terms of the power of appointment in the trust instrument (*in re Wheeler and De Rochaw*, 1896, 1 Ch. 315).

The statutory power of appointment might in certain cases override, where there has been a virtual repeal of similar powers in a Private Act, the special powers in that Act (*in re Lloyd's Trusts*, 1888, W. N. 20).

“Instrument,” by Section 50, *post*, includes “Act of Parliament.”

Sub-section 6.—*This section applies to trusts created either before or after the commencement of this Act (see Section 54 of this Act).*

This will include instruments creating trusts executed even before Lord Cranworth's Act (23 & 24 Vict. c. 145).

This section applies also for the purposes of the Settled Lands Acts (see Section 47, *Sub-section 1, post*).

See Appendix II., Forms 1 and 2.

11. (1) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person (if any) as is empowered to appoint

Retirement
of trustee.

trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument (if any) creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4) This section applies to trusts created either before or after the commencement of this Act.

Section 11.—This section replaces Section 32 of The Conveyancing and Law of Property Act, 1881.

The powers of the section come into play under the following conditions:—

1. There must be *more than two trustees*.
2. The trustee desiring to retire must declare *by deed his desire of being discharged*.
3. The co-trustees, and such other person as is empowered to appoint trustees, *must consent to the discharge of the trustee, and to the vesting in the co-trustees of the trust property*. They will then be fully entitled to act in reference to the trust property as the sole trustees (*Cafe v. Burt*, 5 Ha. 37).

This section applies only to a case of disclaimer of trusts connected with property, and not to a mere power unconnected therewith, which is dealt with by Section 6 of The Conveyancing Act, 1882, and which permits mere powers to be disclaimed.

A trustee cannot disclaim part only of his trust, but this does not affect the powers of appointing a separate set of trustees under Section 10, Sub-section 2 (b), of this Act. This was distinctly decided in *re* Lord and Fullerton's Contract (1896, 1 Ch. 228). There a testator who had real and personal property in England and the United States of America gave all his residuary real and personal estate to five trustees, of whom one was resident in the United States. The will was proved by three of the English trustees, the fourth having disclaimed. The American trustee executed a deed by which he declared that he disclaimed the offices of trustee and executor under the will, and all interest in and power over the real and personal estate without the bounds of the United States of America devised and bequeathed by the will. The English trustees sold some of the English real estate to a purchaser, who objected that the American trustee ought to join in the conveyance of the property. It was held that the disclaimer of the American trustee was void.

It was held in *West of England and South Wales District Bank v. Murch* (23 Ch. D. 138) that the power of appointing new trustees given by Section 27 of the Act (23 & 24 Vict. c. 145) authorises a retiring trustee (one of two originally appointed) to appoint a single trustee in place of himself, the other original trustee having previously disclaimed without acting. But the law will now be as laid down in this section of the Trustee Act.

Sub-section 2.—This sub-section should be read in connection with Sub-sections 2, 3, and 4 of Section 12 of this Act.

See Appendix II., Form 3.

12. (1) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

Vesting of trust property in new or continuing trustees.

(2) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person (if any) empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3) This section does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner directed by or under Act of Parliament.

(4) For purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5) This section applies only to deeds executed after the Thirty-first of December, One thousand eight hundred and eighty-one.

Section 12, Sub-section 1.—This simple and effective method of vesting the trust property was legislatively enacted by Section 34 of The Conveyancing Act, 1881. That section is now repealed, and is replaced by this section. The subject-matter of the trust which can be so vested must be—

1. Any estate or interest in any land.

2. Any estate or interest in any chattel.
3. The right to recover and receive any debt or other thing in action.

Equitable interests need no vesting declaration. The appointment of new trustees itself vests them (*Dodson v. Powell*, 18 L. J., Ch. 237), but it is obviously only prudent for the new trustees to acquire the legal estate.

This section does not, however, include (see Sub-section 3)—

1. Any legal estate or interest in copyhold or customary land.
2. Land conveyed by way of mortgage.
3. Any share, stock, annuity, or property transferable only in books kept by a company or other body, or in manner directed by or under Act of Parliament.

“Land” is defined in this Act to include manors, and incorporeal as well as corporeal hereditaments, and any interest therein, and also an undivided share of land (see Section 50).

It is to be remarked that the vesting declarations must be in the same document as the appointment of new trustees, and that the document must be a deed (see Appendix II., Form 4).

As to stamping such a deed, *Hadgett v. Commissioners of Inland Revenue* (3 Exch. D. 46) shows that such a document will have to be stamped as an appointment, and also as containing a vesting declaration. In the case of a chose in action notice to the debtor is necessary to complete the title. It may not always be convenient to vest the property by declaration. In that case a conveyance will have to be resorted to.

“*The persons who by virtue of the deed become and are the trustees for performing the trust.*”—These persons are, of course, the continuing trustees and the new trustee, or the new trustees alone if the former trustees have all died or retired.

Where a mortgagor by deposit of deeds had declared himself a trustee of the legal estate for the mortgagee, it was held that new trustees appointed by the mortgagee were trustees for performing a trust within this section (see *London & County Banking Co. v. Goddard*, 66 L. J. Ch. 261; 1897, W. N. 18). And in that case the mortgagor, having conveyed the legal estate to a subsequent incumbrancer with notice, it was also held that a vesting declaration by the mortgagee contained in the deed appointing new trustees operated to vest the legal estate in them, and that the subsequent incumbrancer was postponed.

Sub-section 3.—The first clause of this sub-section has in view the protection of the rights of the lord of the manor wherein any copyhold property belonging to the trust is situate. The lord having

usually the right to a fee on the admission of a new tenant, this right is preserved by the section, which does not render unnecessary the usual surrender and admission. In cases, then, where there is copyhold property comprised in a trust, it may, where there are no persons who can surrender to the new trustees so as to entitle them to claim admission, be necessary to take out a summons for a vesting order of the property, and then to get admission in the usual and recognised manner. The Court can make a vesting order where trustees have been appointed (see *post*, p. 152) under an existing power, whether statutory or otherwise, and the proper course is to exercise it and then apply for a vesting order, if the property cannot be otherwise vested either by vesting declaration or conveyance, surrender, or other appropriate method. For Form of Summons for Vesting Copyhold Property, &c., see Appendix II., Forms Nos. 5, 6, 7, and 8, and for forms of order vesting copyholds where a vendor of copyholds has died before conveyance leaving an infant heir who has been admitted see *in re* Beaufort's Will (1898, W. N. 148 (5)), referring to *in re* Pagani's Trust (1892, 1 Ch. 236).

“*Land conveyed by way of mortgage.*”—This exception was doubtless inserted to prevent the trusts appearing on the title to the mortgaged land. A transfer, or, if not obtainable, a vesting order as above, will in such cases be necessary (Harrison's Settlement, 1883, W. N. 31; see also London and County Banking Co. v. Goddard, 1897, W. N. 18; and Seton, 6th ed., Vol. II., p. 1235).

“*Any such share,*” &c., is intended to preserve the statutory mode of transfer indicated in the Companies Acts or other Statutes under which the company is incorporated, and which usually incorporate the Companies' Clauses Acts, and according to which such share, stock, annuity, or other property will have to be transferred.

In the case of executors who, having taken out probate, are desirous of selling some of the testator's holdings for the purpose of paying debts, legacies, and duties, or are desirous of transferring the shares to the residuary legatee, or to any legatee by way of appropriation, the course usually followed is:—Assuming that A. and B. are the trustees, and that B. dies, then A., the survivor, executes transfers for a nominal consideration, transferring the shares to himself and C., the new trustee: the transfers are sent to the respective companies accompanied by the certificate of death of the deceased trustee as proof, or such other reasonable evidence of death as the company may require, and the shares are registered in the names of A. and C. If a surviving trustee has died and new trustees be appointed, then transfers are executed by the executors or administrators of the last deceased trustee transferring the shares to the new trustees, and these transfers, together with the probate of the will or the grant of administration or such other similar evidence as above mentioned, are sent to the companies,

and the shares are registered by them in the names of the new trustees. It may here be noted that English companies will never permit notices of trusts to be inscribed on their registers, so that where two or more persons are trustees they will appear on the register of an English company as joint holders, and the survivors or survivor will be entitled (as trustees or trustee) to the shares. In Scotch companies the case is different. It is necessary in such cases—*i.e.* where shares are held in such companies by two or more persons as trustees—to insert after their names on the register “as trustees.” In that event, when one or more die, the shares will vest in the survivors or survivor. If those words are omitted, the interest of the deceased trustee will go to his heirs according to Scotch law, and trouble may be experienced in revesting the property in the new trustees.

Sub-section 4.—This sub-section is inserted with a view to applying the Registration Acts (7 Anne c. 20, &c.), which provide that one of the grantors or grantees must make the memorial of the deed to be registered. The person “making the declaration” —*i.e.* of vesting under Sub-section 2—is, therefore, by virtue of this sub-section to be deemed a grantor, and can therefore make such memorial.

Sub-section 5.—This sub-section merely enacts that vesting declarations, such as are above referred to, can only be effectively included in deeds executed after the 31st December, 1881.

This section would appear to extend not only to the case where one new trustee is appointed, but also to the case where two or more new trustees are appointed, since by The Interpretation Act, 1889 (52 & 53 Vict. c. 63, Section 1), the singular includes the plural and *vice versâ*, unless a contrary intention appears.

As to the costs relating to the appointment of new trustees, *Harvey v. Olliver* (1887, W. N. 149) decides that the following costs can be allowed out of the property:—(1) Costs of the former trustees, payment of which was demanded by the legal personal representative of the survivor of such trustees previously to his transferring the trust property; (2) Costs incurred by the defendants previously to their appointment in obtaining a statement of the trust property and ascertaining that the power of appointing new trustees was being properly exercised; (3) Costs incurred in reference to the appointment of new trustees by the donee of the power of appointment.

Purchase and Sale.

13. (1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in

Power of trustee for sale to sell by auction &c.

selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.

(2) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3) This section applies only to a trust or power created by an instrument coming into operation after the Thirty-first of December, One thousand eight hundred and eighty-one.

Section 13.—This section is merely a re-enactment of Section 35 of 44 & 45 Viet. c. 41, which gave statutory force to the common form provisions of a power of sale or trust for sale.

A *trust for sale* and a *power of sale* differ in the following ways:—

- (i.) A power of sale does not operate as a conversion of the property over which it is given until it is exercised, while a trust does so from its creation.
- (ii.) Powers are strictly construed, and can only be exercised by the persons who are, either expressly or by reference, designated as donees of the powers.
- (iii.) A power to two or more will not survive without express words or necessary implication, whereas the survivor of trustees can execute a trust.
- (iv.) A power of sale does not infringe the law against perpetuities if it be unrestricted as to time (*Lansbury v. Collier*, 25 L. J., Ch. 672; *re Lord Sudeley and*

Baines & Co., 1894, 1 Ch. 334); while a *trust for sale*, if unrestricted, may infringe the rule (*Goodier v. Edmunds*, 1893, 3 Ch. 455; *re Wood*, *Tullett v. Colville*, 71 L. T. 414; *re Daveron*, *Bowen v. Churchill*, 69 L. T. 752). A power of sale given to several persons by name and their heirs cannot be exercised by the survivors (*Townsend v. Wilson*, 1 B. & Ald. 608); but a power given to "my trustees" may be exercised by the survivors or other trustees for the time being (*Byam v. Byam*, 24 L. J., Ch. 209). In *Paxton and Tong's Contract* (1897, W. N. 178, No. 5) the executor of a last surviving trustee was held entitled to sell.

The trust for sale or power of sale may be either express or constructive. Constructive powers of sale arise most frequently in the case of executors; and as "trustee" includes executor, the section under discussion applies to executors selling under an implied or express power of sale.

The rules governing the power of executors, independently of their power as real representatives, to sell lands may shortly be stated as follows:—

- (i.) A devise that lands shall be sold by the executors gives them a power of sale.
- (ii.) If the proceeds of sale are to be distributed for purposes which executors can alone perform there is an implied power of sale.
- (iii.) The blending of realty and personalty in one fund has been held a sufficient indication to imply a power of sale.
- (iv.) A charge of debts gives a power of sale to executors, and, under Sections 14, 15, and 16 of 22 & 23 Vict. c. 35, they can convey the legal estate.

Executors also have full and unrestricted power to sell the chattels of their testator. As to their power as real representatives to sell real estate for the purposes of administration, see Part I. of *The Land Transfer Act, 1897*, and the notes on the several sections thereof, *post*.

Under this section, wherever there is a *trust for sale* or a *power of sale* (as to which see below) created since 31st December, 1881—

1. The trustees may sell (a) all or (b) any part of the property.
2. The trustees may concur with any other person in selling (a) all or (b) any part of the property.

3. Subject or not to prior charges.
4. Together or in lots.
5. By public auction or private contract.
6. Subject to any conditions the trustees think fit.
7. With power to vary or rescind the contract.
8. Unless there be any contrary intention expressed in the instrument.

1. *The Trustees may Sell (A) All or (B) Any Part of the Property.*

The leading general principles which should guide a trustee in exercising a power of sale, or carrying out a trust for sale, may be shortly stated:—

- (i.) A trustee cannot, after the institution of a suit to administer the trusts of which he is a trustee, and to which suit he is a party, enter into a contract for sale without the consent of the Court (*Walker v. Smallwood*, Amb. 676); but in the case of executors their power to sell seems unaffected until decree (*Reeves v. Burrage*, 14 Q. B. 504). Where absolute discretion has been given to trustees as to the exercise of a power the Court will not compel them to exercise it, but if they propose to exercise it the Court will see that they do not exercise it improperly; and where the power is coupled with a trust or duty the Court will enforce the proper and timely exercise of the power. The case of *in re Courtier*, *Coles v. Courtier* (34 Ch. D. 136) is a typical instance of the refusal of the Court to control the exercise of a power (see also *re Blake*, *Jones v. Blake*, 29 Ch. D. 913).
- (ii.) If the *cestuis que trust* are all *sui juris* they can agree to extinguish the power of sale (*re Palmer's Will*, L. R., 13 Eq. 408; *re Hirst's Mortgage*, 45 Ch. D. 263; *re Wadsworth Trusts*, 1890, W. N. 163). A trustee for sale ought not to sell after the beneficiary has attained full age, or where the objects of the trust have been fulfilled; but if there are more beneficiaries than one, any of them can require that the trust for sale shall be carried out (*Biggs v. Peacock*, 22 Ch. D. 284; *re Tweedie and Miles*, 27 Ch. D. 315; *re Hotchkys, Freke v. Calmady*, 32 Ch. D. 408; and *re Teale v. Teale*, 34 W. R. 248). And where there is a trust for sale for the purposes of division the trustees may sell notwithstanding that all the beneficiaries have attained vested interests; but in such a case all the beneficiaries concurring might put an end to the power of sale, and

would then be entitled to call for a conveyance of the property (*Peters v. Lewes and East Grinstead Railway Co.*, 18 Ch. D. 429; *in re Cotton's Trustees and the School Board for London*, 19 Ch. D. 624; and *in re Horsnail, Womersley v. Horsnail*, 1909, 1 Ch. 631). *In re Jump, Galloway v. Hope* (1903, 1 Ch. 129) contains a lucid review of the cases as to the extinction of a power of sale owing to the absolute vesting of the beneficial interest in the property in possession in a person. It was there held that a power of sale given by a will to trustees to enable them to perform a trust for maintenance, out of capital as well as income, of a lunatic during his life, is not determined by the lunatic's becoming absolutely entitled to the property so long as he is unable to call for a conveyance.

And where there is a trust for sale at a particular time that time cannot be anticipated by the trustees. For instance if an estate be vested in trustees in trust for A. for life, and on his decease to sell, the trustees have no power to sell during the life of A. (*Blacklow v. Laws*, 2 Hare 40; *Johnstone v. Baber*, 8 Beav. 233).

But if all the beneficiaries entitled to the property on the death of A. were *sui juris* and together with A. concurred in a sale of the property a good title might be made (see *Want v. Stallibrass*, L. R., 8 Exch. 175, per Kelly, C. B., at p. 182).

- (iii.) The trustee must consider primarily the interests of his *cestuis que trust*, particularly when there are successive interests, when deciding for or against a sale and the time for it. Subject to any time being fixed by the instrument creating the trust, a trustee should sell with all convenient speed, but even if the time expire the power of sale is still exerciseable.

If a specific time is indicated for the sale of the property, and trustees neglect then to perform, and loss ensues afterwards, they may be liable.

Trustees in cases where the power or trusts comprise property of different descriptions—as, for example, land and timber—must not sell timber where by so doing the remaindermen would be benefited at the expense of the tenant for life (*Davies v. Westcombe*, 2 Sim. 425). It is in connection with this topic that the case of *Howe v. Lord Dartmouth*—whence the rule known as “the rule in *Howe v. Lord Dartmouth*”—is derived should be borne in mind by trustees. The rule, shortly stated, is, that where personal estate is given in terms amounting to a general residuary bequest, to be enjoyed

by persons in succession, the interpretation the Court puts upon the bequest is that the persons indicated are to enjoy the same thing in succession, and in order to effectuate that intention the Court, as a general rule (and in the absence of any express or implied intention on the part of the testator that it is to be enjoyed in specie), converts into permanent investments so much of the personalty as is of a wasting or perishable nature at the death of the testator and also reversionary interests (*Howe v. Earl of Dartmouth*, 7 Ves. 137). The rule did not originally ascribe to testators the intention to effect such conversions, except in so far as a testator may be supposed to intend that which the law will do; but the Court, finding the intention of the testator to be that the objects of his bounty shall take successive interests in one and the same thing, converts the property, as the only means of giving effect to that intention (per Sir J. Wigram, V.-C., 3 Hare 611). Reversionary interests are converted on the ground that if it is equitable that wasting investments should be converted for the benefit of those entitled in remainder, so also for the benefit of the tenant for life future interests should be sold immediately so as to produce a present income (see the remarks of Lord Brougham in *Prendergast v. Prendergast*, 3 H. L. C. 218).

- (iv.) The Court will not enforce, at the instance of a purchaser, a contract which is a clear breach of trust, and will, even where a clear breach of trust is contemplated, restrain a sale by a fiduciary vendor (*Oceanic Steam Navigation Co. v. Sutherland*, 16 Ch. D. 236; *Wood v. Richardson*, 4 Beav. 176).
- (v.) A trustee should inform himself of the value of his trust estate by valuation or otherwise (*Oliver v. Court*, 8 Pr. 165; *Campbell v. Walker*, 5 Ves. 680). Partly for this reason an option of purchase of the trust estate cannot be given (*Oceanic Steam Navigation Co. v. Sutherland*, 16 Ch. D. 236). This rule is based on the principle that it is the trustee's duty to consider *at the time of sale* all the circumstances bearing on the value, which is obviously impossible where an option subsequently operating is given.
- (vi.) It appears to be law that a trust for sale does not authorise a mortgage (*Stroughhill v. Anstey*, 1 De G. M. & G. 645). But, on the other hand, a power

to mortgage includes the right of giving a power of sale (*Bridges v. Longman*, 24 Beav. 27; *Cook v. Dawson*, 29 Beav. 128; *Cruikshank v. Duffin*, L. R., 13 Eq. 555). And a power to raise a fixed sum implies a power to raise also the incidental costs (*Armstrong v. Armstrong*, L. R., 18 Eq. 541).

(vii.) The effect of *re Frith and Osborne* (3 Ch. D. 618) is that trustees with a power of sale can, under it, agree to make a partition.

(viii.) Notwithstanding that the section says the trustees may sell "*all or any part of the property*," the estate cannot be sold separately from the timber on it, even though the tenant for life may be without impeachment of waste; but such a sale may be sanctioned under Section 13 of 22 & 23 Vict. c. 35 (*Cholmeley v. Paxton*, 3 Bing. 207; 5 Bing. 48; 3 Russ. 565, where a sale was set aside after half a century on account of a separation of the timber and the land), or under Section 35 of The Settled Land Act, 1882 (45 & 46 Vict. c. 38). The Act 22 & 23 Vict. c. 35 permits a confirmation of such a sale where a *bonâ fide* sale has been made, and by mistake a portion of the purchase money has been paid to the tenant for the life or others as the value of the timber or other articles.

The same rule applies to selling the minerals apart from the surface, and it was so decided in *Buckley v. Howell* (29 Beav. 546). But 25 & 26 Vict. c. 108 enables trustees and "*other persons*"—*i.e.* mortgagees (*re Beaumont's Mortgage Trusts*, L. R., 12 Eq., 86; *re Wilkinson's Mortgaged Estates*, L. R., 13 Eq. 634)—with the previous sanction of the Court, to sell the surface separately from the land. That Act is now repealed by Section 51 of the present Act; but, since "trust" is defined as not including the duties incident to an estate conveyed by way of mortgage, it seemed open to doubt whether mortgagees could exercise this power, even with the sanction of the Court. To clear up this doubt Section 3 of The Trustee Act, 1893, Amendment Act, 1894, enacted that the words "or other person" should be inserted in Section 44 of this Act (The Trustee Act, 1893). The effect of this is to enable mortgagees still to exercise this power. A sale or lease of lands under The Settled Land Act, 1882, may be made of the land and minerals separately (see The Settled Land Act, 1882, 45 & 46 Vict. c. 38, Sections 6

and 17, and also The Settled Land Act, 1890, 53 & 54 Vict. c. 69, Section 8). As to application to the Court under Section 44, which replaces 25 & 26 Vict. c. 108, see notes to Section 44.

Where the power of sale is to be exercised "*at the request and by the direction of*" the tenant for life or other person, that request and direction must be obtained, since by Sub-section 2 of this section the power of sale "shall have effect subject to the terms of the instrument creating the trust or power and to the provisions therein contained." But it is not necessary for the consent to be obtained before the contract for sale. It is sufficient if it be obtained before conveyance (*Sykes v. Sheard*, 33 Beav. 114). The Court will not enforce specific performance of a contract requiring such consent if it has not been obtained (*Phillips v. Edwards*, 34 Beav. 440).

If a trustee has no power or trust for sale vested in him he may, nevertheless, at the request of all the beneficiaries, sell the trust property, and can, if he has the entire legal estate vested in him, make a good title (*in re Baker and Selmon's Contract*, 1907, 1 Ch. 238).

For the case of a conflict between two sets of trustees—the trustees of a marriage settlement, with power of sale, and the trustees of a will exercising a power of appointment by which the trust property was devised to trustees upon trust to sell and stand possessed of the proceeds for the objects of the power—as to who were the proper persons to sell see *in re Adam's Trustees and Frost's Contract*, 1907, 1 Ch. 695.

Where by a will or settlement property is directed to be sold and converted and the proceeds held in trust for one for life and then for others, and, either in exercise of a power of postponement or without any impropriety, the sale is postponed, the person entitled to the life interest in the proceeds is, as regards the real estate, entitled to the rents and profits thereof until sale (*in re Searle*, *Searle v. Baker*, 1900, 2 Ch. 829; *in re Earl of Darnley*, *Clifton v. Darnley*, 1907, 1 Ch. 159; *in re Oliver*, *Wilson v. Oliver*, 1908, 2 Ch. 74).

And a tenant for life so entitled is to be deemed the tenant for life of the real estate within Section 63 of The Settled Land Act, 1882 (*in re Searle*, *ante*).

And where a will contains a trust for conversion, with a power to retain investments existing at the date of the will, and the trustees are not unanimous as to the retention of some of the investments made by the

testator, the trust for sale prevails and the investments must be sold, although such investments are within the investment clause in the will (*in re Hilton*, Gibbes v. Hale-Hilton, 1909, 2 Ch. 548).

2. *Trustees may Concur with any other Person in Selling (A) All or (B) Any Part of the Property.*

Trustees for sale of an aliquot part of an estate could, even before the Conveyancing Act, join in a sale of the whole estate (*Cavendish v. Cavendish*, 10 Ch. D. 319); but the section now being discussed clears up any doubt on the subject, and gives trustees a wide discretion as to the mode of sale under such circumstances. The duties of trustees concurring with other people in selling are stated in *re Cooper* and *Allen's Contract* (4 Ch. D. 802). They are—(i.) To see that such a mode of sale is *beneficial* to their *cestuis que trust*; (ii.) To see that their share of the purchase money is *apportioned* before the completion of the purchase, and to *obtain payment* of such apportioned share; and (iii.) To *apportion* the share themselves, taking care to act under proper advice. The power of sale of an *aliquot part* does not imply a power of leasing (*Evans v. Jackson*, 8 Sim. 217, and *Micholls v. Corbett*, 34 Beav. 376).

3. *Subject or Not to Prior Charges.*

The trustee may sell merely the equity of redemption—*i.e.* subject to the charges or free from the charges—if the mortgagees will concur and be paid off (*Manser v. Dix*, 8 De G. M. & G. 703).

4. *Together or in Lots.*

Whether the property should be disposed of in lots is a question to be decided by the trustees when contemplating a sale, who should seek advice from a competent auctioneer. Expenses properly incurred in so doing will be allowed out of the trust property.

5. *By Public Auction or Private Contract.*

As to the consideration which should guide trustees in choosing the mode of sale, the following cases are useful:—*Ex parte Dunman* (2 Rose 66), *ex parte Hurlly* (2 D. & C. 631), *ex parte Ladbroke* (1 Mont. & M'A. 384), *Davey v. Durrant* (1 De G. & J. 535).

A trustee cannot delegate the power of sale (*Hardwick v. Mynd*, 1 Anst. 109). He must appoint the valuer (*Fry v. Tapson*, 28 Ch. D. 268), receive the purchase money, and advertise the property if the sale is to be by public auction. He must also

see that proper arrangements are made for selling, as by advertisement and due notice of the sale, and if proper arrangements are not made an injunction can be issued at the instance of the beneficiaries.

But this rule must not be taken as preventing—

- (i.) The performance of merely formal or ministerial acts by attorney by the trustee: thus the execution of a conveyance in pursuance of a sale decided upon by the trustee (see *per* Lindley, L. J., in *re* Hetling and Merton's Contract, 1893, 3 Ch. 269, at p. 280). What cannot be delegated is the exercise of a discretion which the personal confidence reposed in him, implied by his being a trustee, prevents any other person from exercising. Where the act to be performed is the execution of a conveyance or other document, it is wise to provide in the conditions of sale (if any) that no objection shall be taken on the ground that the deed will be executed by attorney.
- (ii.) Where in the usual course of business acts are done by an agent, trustees are also entitled to employ and act by agents without incurring responsibility for their deeds, provided (1) they (the trustees) have exercised due care in choosing such an agent, (2) such agent is employed in the scope of his own business. A trustee may thus transmit money payable at a distance through a bank; or a trustee investing trust funds may employ a broker to procure securities authorised by the trust, and may pay the purchase money to the broker (*Speight v. Gaunt*, 9 App. Ca. 1; *ex parte* Belchier, Amb. 219; *Clough v. Bond*, 3 My. & Cr. 497; *Bennett v. Wyndham*, 4 De G. & J. 257; and *Shepherd v. Harris*, 1905, 2 Ch. 310).

The rule in *Speight v. Gaunt* (*ante*) that in investing trust funds a trustee may employ a broker, and pay the purchase money to the broker, if he follows the usual and regular course of business adopted by ordinary prudent men, applies to a case where a co-trustee is employed and paid as a broker under a clause in the instrument creating the trust (*Shepherd v. Harris*, 1905, 2 Ch. 310).

It is not the usual course of business for purchasers of colonial or other inscribed stocks to attend personally at the bank and accept the transfer, though that course is recommended by a note on the common form of stock receipt issued to purchasers by the bank (*Shepherd v. Harris*, *ante*).

- (iii.) A trustee may pay reasonable remuneration to an agent employed by him. The principles to be followed

in the matter of the employment of agents are treated of in *re Weall*, *Andrews v. Weall* (42 Ch. D. 674; see also *Carruthers v. Carruthers*, 1896, A. C. 659).

If the property is sold by auction, the trustees must not permit the deposit to remain unnecessarily in the hands of the auctioneer whom they have employed (*Edmonds v. Peake*, 7 Beav. 239; *Wyman v. Paterson*, 1900, A. C. 270). The auctioneer, however, is a trustee of the deposit paid to him (*Crowther v. Elgood*, 34 Ch. D. 691).

Money received from a sale should not be left longer than absolutely necessary on deposit in a bank, but if it have to be retained should be invested, if in nothing else, in Consols. Six months may be stated as a limit of time during which to allow money to remain in a bank (*Cann v. Cann*, 51 L. T. 770). The trustee may become liable if he leaves the money unnecessarily long in the bank and it fails (*Challen v. Sheppam*, 4 Ha. 555).

6. *Subject to any Conditions the Trustees think fit.*

This section should be considered in connection with Sections 14 and 15 of this Act, which prevent a sale to a *bonâ fide* purchaser being impeached, and see the following cases:—*Hobson v. Bell* (2 Beav. 17), *Wilkins v. Fry* (2 Rose 375), *Rede v. Oakes* (4 De G. J. & S. 505), *Dance v. Goldingham* (L. R., 8 Ch. 902), *Dunn v. Flood* (25 Ch. D. 629), *Falkner v. Equitable Reversionary Society* (4 Drew. 352), and notes to Section 14, *post*.

7. *With Power to Vary or Rescind.*

The power of rescission, which is now usually retained by the vendors by means of a condition enabling them to rescind if unwilling or unable to comply with objections or requisitions, is a proper one to be inserted in conditions even on a sale by trustees (see also Sections 14 and 15 of this Act, and *Noble v. Edwards*, 5 Ch. D. 378).

The conditions must be carefully framed, for the trustee must take care on the one hand that they are sufficient having regard to the state of the title, and on the other hand that they are not unnecessary and such as to diminish the amount properly obtainable for the beneficiaries as the price of the property.

8. *As to the Persons to whom a Sale can be made.*

It may be laid down as a general principle that a trustee cannot sell to himself. Such a sale would be set aside. Upon the setting aside of such a sale the Court makes the purchaser account for the rents and profits received by him since the sale, but not for interest on those rents and profits (*Silkstone and Haigh Moor Coal Co. v. Edey*, 1900, 1 Ch. 167). The sale can

be set aside at the instance of the beneficiaries, even if the trustee has not taken any advantage (*Killick v. Flexney*, 4 Bro. C. C. 161). A sale by a trustee to himself is not void *ab initio*, and if there is knowledge of it on the part of the beneficiaries, lapse of time will confirm it (*Randall v. Errington*, 10 Ves. 423). Nor will the retirement of a trustee, with a view to his purchasing from the continuing trustees, authorise a purchase by him (*Campbell v. Walker*, 5 Ves. 678; *Knight v. Marjoribanks*, 2 M. & G. 12).

Apart, however, from circumstances of doubt or suspicion, there is no rule of Courts of Equity that a person who has ceased for a considerable time to be a trustee, and who did not retire with the intention of purchasing the trust property, cannot become a purchaser (*in re Boles and British Land Company's Contract*, 1902, 1 Ch. 244).

But the rule that a trustee cannot purchase the trust property does not apply to a person named as a trustee but who has disclaimed without having acted in the trust; or to a tenant for life whose consent is required by the terms of the power of sale; or to mere nominal trustees as trustees to preserve contingent remainders; or where the trustee is a mere bare trustee for another without duty to perform; or where a trustee sells to the trustees of his own settlement and under which he has a partial interest.

A purchase by a trustee of his *cestui que trust's* interest in the trust property is, too, a transaction which should be avoided, for the Court views such a transaction with great suspicion, and will call upon the trustee to show that he has given full information, that he has kept nothing back, and that he has given an adequate price (*Dargan v. Macpherson*, 1902, A. C. 197, 202).

Power to
sell subject
to deprecia-
tory con-
ditions.

14. (1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the

sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon the ground aforesaid.

(4) This section applies only to sales made after the twenty-fourth day of December, One thousand eight hundred and eighty-eight.

Section 14, Sub-section 1.—By the rules of equity, independently of any enactment, a trustee for sale would, it is apprehended, be justified in resorting to special stipulations if the state of the title and the circumstances of the sale require it, and the stipulations are reasonable and such as a provident owner would employ in the case of a sale of his own property (*Ord v. Noel*, 5 Madd. 438). However, prior to the enactments after mentioned, it was generally the practice to insert in the instrument containing the trust for or power of sale authority for the trustees to sell under special conditions.

By Section 2 of Lord Cranworth's Act (23 & 24 Vict. c. 145), where the trust instrument was executed after the passing of the Act (the 28th of August, 1860), and such instrument contained no declaration of a contrary intention, trustees for sale were authorised to insert in any conditions of sale or contract such special conditions of sale as to title or evidence of title or otherwise as they might think fit. By Section 13 of this Act, which replaces Section 35 of The Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), which repealed Lord Cranworth's Act (but not so as to affect the operation of instruments executed before the commencement of the repealing Act), it is provided that trustees for sale, where the instrument creating the trust for or power of sale comes into operation after the 31st of December 1881, and does not express a contrary intention, may, subject to the terms of such instrument and to the provisions therein contained, sell, or concur with any other person in selling, subject to any such conditions respecting title or evidence of title or other matters as they think fit.

Neither the authority usually contained in instruments creating trusts for sale, nor that conferred by Section 13 of this Act,

would, however, justify a trustee in using special conditions which are not rendered actually necessary by the state of the title or the circumstances under which the sale is made, and which might depreciate the sale (*Dance v. Goldingham*, L. R., 8 Ch. 909, 910, and *Dunn v. Flood*, 28 Ch. D. 591). A mere desire to save expense in regard to the sale is no sufficient reason for the employment of conditions having a depreciatory effect. Thus a condition limiting the commencement of title to the trust instrument itself, and stipulating that no earlier title should be called for except at the purchaser's expense (*Dance v. Goldingham*, L. R., 8 Ch. 902); a condition making an instrument of recent date the root of title where there was nothing on the title rendering such limitation necessary; a condition that every recital or statement in any abstracted document should be deemed conclusive evidence of the fact or matter recited or stated, where apparently there would have been no difficulty in proving the title; and a condition that the sale was made subject to the existing tenancies, restrictive covenants, and other incidents of tenure, and there were no such tenancies, covenants, or incidents of tenure, have been held to be improper (*Dunn v. Flood*, 25 Ch. D. 629; 28 Ch. D. 586). On the other hand, a condition limiting the title to ten years where the property had been plotted out for building purposes, and was offered for sale in numerous small lots, and to have furnished the earlier title to the purchaser of each lot would have put the estate to very great expense, was held to be proper under the circumstances (*Dunn v. Flood*, 28 Ch. D. 586). Probably trustees are always justified in the user of conditions depreciatory in a sense, but beneficial on the whole, and such as a prudent owner would resort to: for example, a condition enabling the vendor to rescind if unwilling to comply with the purchaser's requisitions, or a condition casting the expense of the production of documents, or of procuring evidence, upon the purchaser (*Falkner v. Equitable Reversionary Society*, 4 Drew. 352; *Hobson v. Bell*, 2 Beav. 17).

Courts of Equity apparently, in deciding whether relief should be given to the *cestui que trust*, or, where action was taken by the trustee or the purchaser, specific performance of the sale enforced, have hitherto thought it sufficient to inquire whether the conditions were calculated to depreciate the sale, and if there were reasonable and proper grounds for their introduction, and have always declined to inquire whether there was an actual depreciation, as being a question impossible for the Court satisfactorily to determine, because the Court cannot know how many people were deterred by the conditions from attending or bidding at the sale (*Dance v. Goldingham*, L. R., 8 Ch. 902, 911). Henceforth, however, it will not be sufficient to show that the conditions were of a nature to depreciate the sale, but it must also be shown that the price obtained was not the full value

of the property, and that the inadequacy was actually caused through the user of the alleged depreciatory conditions.

Sub-section 2.—Hitherto, where on a sale by trustees depreciatory conditions have been employed, the *cestui que trust* could either have prevented the sale from being completed, or have impeached the purchaser's title after completion (*Rede v. Oakes*, 4 De G. J. & S. 513; *Dance v. Goldingham*, L. R., 8 Ch. 902). But since the passing of this Act no sale will be impeachable after the conveyance to the purchaser has been executed on the ground that such sale was made under conditions which affected the adequacy of the price obtained, save in the case of collusion between the trustee and the purchaser. However, although where depreciatory conditions have been employed the sale will not be impeachable against a *bonâ fide* purchaser after conveyance, there is nothing in the Act to debar the *cestui que trust* from making the trustee personally liable for the amount of the inadequacy caused thereby.

Sub-section 3.—As a sale by trustees subject to conditions which, under the circumstances, are unnecessarily depreciatory in their nature is a breach of trust, the purchaser might have declined to complete, and, on the other hand, he could not have enforced the sale against the trustees (*Dance v. Goldingham*, L. R., 8 Ch. 911). The purchaser's right to object on the ground of the unnecessary user of depreciatory conditions is now taken away.

Sub-section 4.—This section is to apply only to sales made after the 24th day of December, 1888, which, it is conceived, means only to cases where the contract for sale was entered into after that date.

15. A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of Section Two of The Vendor and Purchaser Act, 1874.

Power to
sell under
37 & 38 Vict.
c. 78.

Section 15.—This section is a re-enactment of Section 3 of The Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), that section being repealed for the purpose of consolidation (see Section 51 and Schedule).

Section 2 of The Vendor and Purchaser Act, 1874, is in the following terms:—

2. In the completion of any such contract as aforesaid, and subject to any stipulation to the contrary in

the contract, the obligations and rights of vendor and purchaser shall be regulated by the following rules: that is to say—

First.—Under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold.

Second.—Recitals, statements and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions.

Third.—The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

Fourth.—Such covenants for production as the purchaser can and shall require shall be furnished at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.

Fifth.—Where the vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents.

The “contract” referred to in the above-mentioned section of The Vendor and Purchaser Act, 1874, is a “contract of sale of land” (see Section 1 of that Act).

“*A Trustee who is . . . a Purchaser.*”—This refers to a trustee who is purchasing property to be held as trust property. It does not refer to the case of a trustee who attempts himself to purchase property belonging to the trust. The strict rule of equity is that a trustee cannot purchase trust property, for he may thereby be using knowledge to his own behoof which he has acquired for the benefit of his *cestuis que trust*. A purchase by a trustee of trust property for himself, and whether directly or indirectly through an agent, will be set aside by the Court at the instance of the beneficiaries. The only way in which a trustee can become a purchaser of trust property is by divesting himself of his character

of trustee, putting himself at arm's length, as it is phrased, with his beneficiaries, concealing from them no fact within his knowledge as to the trust property, and coming forward on the footing of an ordinary purchaser (see also *ante*, p. 107).

16. When any freehold or copyhold hereditament is vested in a married woman as a bare trustee she may convey or surrender it as if she were a *feme sole*.

Married women as bare trustee may convey.

Section 16.—This section is a re-enactment of Section 6 of The Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), that section being repealed by the present Act for the purpose of consolidation (see Section 51 and the Schedule).

The question whether a married woman who is a trustee is a bare trustee or a trustee having active duties to perform is now, however, of no importance, so far at least as a conveyance by her of the trust property is concerned, for by Section 1 of The Married Women's Property Act, 1907 (7 Edw. VII. c. 18) it is enacted that "a married woman is able, without her husband, to dispose of, or join in disposing of, real or personal property held by her solely or jointly with any other person as trustee or personal representative in like manner as if she were a *feme sole*."

It seems clear from *re Harkness & Allsopp's Contract* (1896, 2 Ch. 358) that The Married Women's Property Act, 1882 (45 & 46 Vict. c. 75, Sections 1, 18, and 24), did not enable a woman married after the commencement of the Act, being a trustee for sale of real estate, to convey to a purchaser, without the concurrence of her husband, and acknowledgment by her of the deed of conveyance. But all conveyances of trust property made by women trustees, married after The Married Women's Property Act, 1882, came into operation, and which were invalid by reason of the non-concurrence of the husband, or want of due acknowledgment, are now made good by The Married Women's Property Act, 1907, which by Section 1, Sub-section (1) provides that the section "operates to render valid and confirm all such dispositions made after the 31st day of December, 1882, whether made before or after the commencement of that Act, but, where any title or right has been acquired through or with the concurrence of the husband before the commencement of that Act, that title or right shall prevail over any title or right which would otherwise be rendered valid by that section."

The expression "bare trustee" is one which has given rise to considerable discussion. It is to be remarked that, according to the definition of a "trust" in Section 50 of this Act, it includes "cases where the trustee has a beneficial interest in the trust

property." It was held in *re Docwra*, *Docwra v. Faith* (29 Ch. D. 693), that a married woman being a trustee for sale, although she had a beneficial interest in the proceeds of sale, was a bare trustee within the meaning of the section which this one replaces, where the sale was under the order of the Court (see The Married Women's Property Act, 1882, 45 & 46 Vict. c. 75, Sections 1 and 18). Stirling, J., in *re Cunningham and Frayling* (1891, 2 Ch. 570), preferred the definition of Hall, V.-C., in *Christie v. Ovington* (1 Ch. D., at p. 281), to that given by Jessel, M. R., in *Morgan v. Swansea Urban Sanitary Authority* (9 Ch. D. 582). According to Hall, V.-C., a trustee who has active duties to perform, although he has no beneficial interest in the trust property, is not a "bare trustee." Perhaps where the *cestui que trust* has become absolutely entitled to the subject of the trust in possession, with power of disposition, without the consent of any other parties, the settlement may be considered at an end, and the trustees' position to have become exclusively that of bare trustees (see *Attorney-General v. Beech*, 1899, A. C., at p. 60, *per* Lord Davey). Where the legal estate in real property is vested in one as trustee for himself and another as tenants in common, he is a bare trustee, and if he receives and retains all the rents and profits it is not a breach of trust but merely creates a debt (*British Mutual Investment Co. v. Smart*, L. R. 10 Ch. 567, 576, 577).

A married woman, to whom subsequently to The Married Women's Property Act, 1882, real estate is conveyed by way of mortgage to secure money belonging to her as her separate property, can, however, convey to a purchaser from the mortgagor without the concurrence of her husband or acknowledgment of the deed of conveyance by her under the Fines and Recoveries Act (*in re Brooke and Fremlin's Contract*, 1898, 1 Ch. 647). So also it has been held that since The Married Women's Property Act, 1882, when two or more persons, one of whom is a married woman, advance moneys by way of mortgage, under a recital that the advance is made out of moneys belonging to them on a joint account, it is not necessary on a transfer of the mortgage either for the husband of the married woman to concur in the conveyance or for her to acknowledge it separately under the Fines and Recoveries Act (*in re West and Hardy's Contract*, 1904, 1 Ch. 144). And in a case where a married woman was, as sole surviving trustee, mortgagee under a mortgage executed before The Married Women's Property Act, 1882, and received payment of the mortgage moneys, it was held that, as on payment to her of all moneys due on the mortgage she became a bare trustee for the mortgagor, she could under this section reconvey without the concurrence of her husband or a deed separately acknowledged (*in re Howgate and Osborn's Contract*, 71 L. J. 279, and see *in re Brooke and Fremlin's Contract*, *ante*).

Various Powers and Liabilities.

17. (1) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust by permitting the solicitor to have the custody of, and to produce, a deed containing any such receipt as is referred to in Section Fifty-six of The Conveyancing and Law of Property Act, 1881; and a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the producing of any such deed by the solicitor shall have the same validity and effect under the said section as if the person appointing the solicitor had not been a trustee.

Power to authorise receipt of money by banker or solicitor.

44 & 45 Vict. c. 41.

(2) A trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance, by permitting the banker or solicitor to have the custody of, and to produce, the policy of assurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment.

(3) Nothing in this section shall exempt a trustee from any liability which he would have incurred if this Act had not been passed, in

case he permits any such money, valuable consideration or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor (as the case may be) to pay or transfer the same to the trustee.

(4) This section applies only where the money or valuable consideration or property is received after the Twenty-fourth day of December, One Thousand eight hundred and eighty-eight.

(5) Nothing in this section shall authorise a trustee to do anything which he is in express terms forbidden to do, or to omit anything which he is in express terms directed to do, by the instrument creating the trust.

Section 17, Sub-section 1.—This section replaces Section 2 of The Trustee Act, 1888, which made an important alteration in the law as laid down in the cases of *re Bellamy and Metropolitan Board of Works* (24 Ch. D. 387) and *re C. Flower and Metropolitan Board of Works* (27 Ch. D. 592). They established the rule that unless there is an express power for the purpose, or (to use the expression of Bowen, L. J., in the former case: see 24 Ch. D. 404) a *moral necessity* (as to which see *ex parte Belchier*, Amb. 218), to employ a solicitor to receive the purchase money, trustees may not receive trust money through their solicitor, even in the ordinary course of business, though where, in the ordinary course of business, they employ a broker or mercantile agent they may receive trust money through such broker or mercantile agent (*ex parte Belchier, ubi supra*; *Speight v. Gaunt*, 9 App. Ca. 1). So, too, a trustee may collect rents by an agent paid by commission, and may employ a bailiff to manage an estate, or an accountant to get out and arrange trust accounts.

By Section 56 of The Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), it was enacted that “where a solicitor produces a deed, having in the body thereof or endorsed thereon a receipt for consideration money or other consideration, the deed being executed or the endorsed receipt being signed by the person

entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt." This section of the Conveyancing Act did away in ordinary cases with the necessity of the solicitor producing a written authority expressly authorising him to receive the purchase money or other consideration (*Viney v. Chaplin*, 2 De G. & J. 482; *ex parte Swinbanks*, *in re Shanks*, 11 Ch. D. 525); but the cases above quoted decided in effect that trustees selling were not within the section, so that where the trustees could not, from special circumstances (*re Bellamy* and Metropolitan Board of Works, 24 Ch. D. 387 see

SUB-SECTION 3 OF SECTION 17.

While these sheets were passing through the press it was decided that in order to bring into operation Sub-section 3 of Section 17 the circumstances must be such that the trustee either knew or ought to have known of the receipt of the money by the solicitor (*In re Sheppard*, *De Brimont v. Harvey*, 1911, 1 Ch. 50).

In the judgment in the same case questions were raised, but not decided, whether—

- (a) Where two trustees appoint under Section 17 a solicitor to act as their agent to receive and give a discharge for moneys receivable by them under their trust, the death of one of the trustees revokes the authority given to the solicitor.
- (b) The delivery to the solicitor of the deed containing the receipt justifies the solicitor in accepting by instalments the money to be received.

WORKS, 24 CH. D. 520). When a purchaser has paid upon the production of such a deed he is exonerated from further liability, even if the solicitor should make away with the money. The trustee, however, who has authorised the receipt in this manner, will only be protected where the money, valuable consideration, or property has been in the hands or under the control of the solicitor no longer than would be reasonably necessary to enable the solicitor to pay or transfer it to the trustee. What this period is must, of course, depend on the circumstances of each case (see note to Sub-section 3, *post*).

The meaning of the whole section has been very fully discussed in *re Hetling* and *Merton's Contract* (1893, 3 Ch. 269). The actual decision in that case was that a general power of attorney given by a trustee, authorising the attorney to execute deeds and transfer property, does not authorise the attorney to execute a deed and give a receipt for the purchase money within the meaning of this section. The argument put forward was that the production of

a deed executed by the trustee's attorney, and sufficient in other respects, implies an authority to the attorney to receive the money. On this, Lindley, L. J. (see p. 280), remarks: "The solicitor to receive the money under Section 2 of The Trustee Act, 1888 [*replaced by this section*], must be appointed by the trustee himself. The trustee must himself permit the production by the solicitor of a deed with a proper receipt clause, in order that such production may have the effect mentioned in the section. It follows from this that if a purchaser were to pay money to a solicitor producing a deed duly executed by a trustee with a proper receipt clause, and it turned out that the solicitor had stolen the deed, or had not been permitted by the trustee to have the custody of it and to produce it, the purchaser would not be protected by the section. At the same time, ordinary business transactions cannot be carried on without some amount of trust; and if a purchaser in an ordinary case were, without reason, to require proof that a solicitor purporting to act for trustees, and producing a proper deed, had their permission to have the custody of and to produce it, the purchaser would, *primâ facie*, be acting unreasonably, and would probably have to pay for his excess of caution." The points above discussed have been further elucidated in the case of *King v. Smith* (1900, 2 Ch. 425), where Farwell, J., approves (p. 432) the statement made by Messrs. Hood and Challis in *Hood and Challis on the Conveyancing Act*, 5th ed., p. 138: "In the absence of anything to suggest the contrary it seems that the person paying the money may, and, indeed, is bound to, assume that the solicitor producing the deed is acting as solicitor for the person having power to give a discharge." There is no custom binding in law to oblige vendors to receive a cheque in payment, even of a person in good credit, though it is usual to do so (*Johnston v. Boyes*, 1899, 2 Ch. at p. 78).

Where the trustees have a banking account and the consideration is cash, the solicitor should pay the money into the bank on the same day, or at the latest the day following.

The section does not make any alteration in the law as to trustees permitting one of themselves to receive the money when selling or otherwise dealing with trust property for which money, valuable consideration, or property is receivable by them. This is illegal (*re C. Flower and Metropolitan Board of Works*, 27 Ch. D. 592). It is, perhaps, doubtful whether this sub-section covers the case of a solicitor trustee employed by his co-trustees as solicitor to the trust (see *Alton v. Harrison* and *Poyser v. Harrison* referred to in Lewin *On the Law of Trusts*, 11th ed., p. 77, note (i)).

The words of the section are wide, and comprise not only money, but "*any valuable consideration or property.*"

Sub-section 2.—By this sub-section a trustee is authorised to appoint a banker or solicitor to receive money due upon a policy of assurance, a power not hitherto possessed unless given expressly

by the instrument creating the trust (see the cases cited in the note to Sub-section 1, above). This sub-section differs somewhat in its wording from Sub-section 1, but as it authorises a trustee to appoint a banker or solicitor to be his agent "*to receive and give a discharge*" for any money payable to him under a policy of assurance by permitting such banker or solicitor to have the custody of and to produce such policy of assurance with a receipt signed by the trustee, an assurance society paying an agent so appointed would doubtless be discharged and freed from further liability.

Sub-section 3.—The period of time during which money, valuable consideration, or other property may be allowed to remain "in the hands or under the control of the banker or solicitor" must depend on the circumstances of each case, subject to the restriction that it must not be "*longer than is reasonably necessary to enable the banker or solicitor . . . to pay or transfer the same to the trustee.*" Trustees should therefore not permit moneys to remain in the custody of their banker any longer than is absolutely necessary to seek a proper investment. Part of a trust fund was invested on a heritable bond afterwards paid off. The trustees allowed their law agent to receive the money and to retain it in his hands uninvested for rather more than six months, and the greater part of it was lost through the bankruptcy of the law agent. It was held by the House of Lords that the trustees were guilty of a plain and positive breach of trust, and were liable to replace the money so lost (*Wyman v. Paterson*, 1900, A. C. 271. on appeal from the First Division of the Court of Session, Scotland). There is apparently no difference between the law of England and the law of Scotland as to the duties and liabilities of trustees in regard to the custody and investment of trust funds (see *ibid.*, p. 279). In *Cann v. Cann* (33 W. R. 40) fourteen months was held too long a period, and in *re Jones, Jones v. Searle* (49 L. T., N. S., 91), trustees were charged interest on moneys they had mixed with their own, and left with their bankers (see also notes to Section 24, *post*, and *Dewar v. Brooke*, 33 W. R. 497).

Sub-section 4.—It is to be noted that this section only applies where the money, valuable consideration, or other property is to be received after the 24th of December, 1888, which would, of course, include any cases where the contract for sale was made before, but the purchase not completed until after, that date.

Sub-section 5.—The creator of the trust can alter the conditions in this section laid down as he thinks fit; but, if well advised, no person creating a trust will do so. The difficulties, both practical and legal, of a trustee's position are such that it is not advisable to depart from the general rules here laid down for facilitating dealings with trust property.

Power to insure buildings.

18. (1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount (including the amount of any insurance already on foot) not exceeding three equal fourth parts of the full value of such building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income:

(2) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

(3) This section applies to trusts created either before or after the commencement of this Act, but nothing in this section shall authorise any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

Section 18.—Before the passing of The Trustee Act, 1888 (Section 7 of which is replaced by this section), the law as to the duty of executors and trustees to insure against fire property vested in them is stated in the cases of *Bailey v. Gould* (4 Y. & C. Exch. 221) and *Fry v. Fry* (27 Beav. 146), and is as follows:—

- (a) An executor is not liable for the loss of property by accidental fire, and is not bound either to insure or to continue the insurance if one has been effected by the testator. In *Bailey v. Gould* (*ubi supra*) the policy had expired previously to the testator's death. In *Fry v. Fry* (*ubi supra*) the testator as a lessee was bound to insure. The insurance expired on the 25th of March, and the testator died on the 27th

without having paid the premium. The premium was not paid by the executors, and the house was burnt down on the 26th of May. In neither of these cases were the executors (in *Fry v. Fry* they were also trustees) held liable, but a payment made by the executors in the latter case, in part discharge of the testator's covenant to insure to the amount of £300 was allowed, indicating that had the executors insured they would have been quite justified in so doing, and that no exception could have been taken to that course.

- (b) The position of a trustee was slightly different from that of an executor. He might at his discretion insure the property, but should obtain the consent of the person or persons entitled to the income before doing so (see Lewin *On the Law of Trusts*, 10th ed., p. 684).

Thus it will be seen that the law, as it stood before The Trustee Act, 1888, placed executors and trustees in a difficult position as regards insuring buildings and property against fire: for, on the one hand, if they omitted to continue or renew a policy of insurance serious loss might be occasioned to the trust estate, while, on the other hand, if they did insure, the beneficiaries interested might raise objections. Moreover, in the case of trustees at least, persons entitled to the income might have to be consulted before the insurance could properly be effected. In the memorandum originally issued with the Bill for The Trustee Act, 1888, the object of the section now under discussion was said to be to remove a doubt then existing in the profession whether a trustee could insist on having trust property insured at the expense of the tenant for life, but, as the definition in Section 50 includes an executor or administrator as well as a trustee in the ordinary sense, this section clearly applies to all these persons.

The section, however, removes all difficulties, leaving it entirely in the discretion of the executor or trustee to insure or not as he thinks fit, without the necessity of consulting anyone interested in the income. The result in the case of a tenant for life will be that the trustee, if he insures, can throw the expense on him, but the insurance is not to exceed three fourths of the full value of the building or property, including the amount of any insurance already on foot. The premiums are payable out of the income of the property insured or other property subject to the same trusts. "Other insurable property" would include chattels personal, even documents, but in practice the powers of the section will doubtless be used mainly for the purpose of insuring buildings. Trustees of landed property have already, where the owner is an infant (and if a woman, unmarried), power to insure (see Section 42, Sub-section 2. of The Conveyancing and Law of Property Act. 1881).

Chattels settled so as to devolve as heirlooms with settled land are "insurable property" within the meaning of Sub-section 1 of this section (*in re* Earl of Egmont's Trusts, *Lefroy v. Earl of Egmont*, 1908, 1 Ch. 821).

And where under a settlement heirlooms are settled so as to devolve with the settled land, and the trustees have in their hands capital moneys subject to the same trusts, the trustees have power under this section to insure the heirlooms against loss by fire, and to pay the premiums out of the income of the capital moneys in their hands (*ibidem*).

As regards repairs by trustees:—

Where real estate is devised to trustees upon trust for one for life with remainders over and the trustees have a bare legal estate with no powers of management, maintenance, or repair, they are, it is conceived, under no obligation as to repairs (*in re* Willis, *Willis v. Willis*, 1902, 1 Ch. 15).

Trustees who have a trust to repair cast upon them are not bound to do more than to repair the premises, but if in their opinion it is necessary to do more than ordinary repairs to keep the property from deteriorating their proper course is to apply to the Court for directions (*in re* Collyer, *Millikin v. Snelling*, 55 L. T. 344).

As to the original jurisdiction of the Court to give directions as to repairs where they are necessary for the preservation of the trust property see *Conway v. Fenton* (40 Ch. D. 512; *in re* De Tessier's Settled Estates, 1893, 1 Ch. 153; and *in re* Willis, *Willis v. Willis*, *ante*).

As to the repair of leaseholds vested in trustees see *in re* Redding, *Thompson v. Redding* (1897, 1 Ch. 876).

Where leaseholds are vested in trustees in trust for persons who are to take in succession, and there is a trust to keep in repair, "keeping in repair" means putting the leaseholds in repair assuming them to be out of repair. They must be put in repair from time to time out of the income—that is, in ordinary repair; but the income is not to be applied in such extraordinary repairs as would be equivalent to rebuilding (*Crowe v. Crisford*, 17 Beav., 507, 510).

As to the right of trustees to be indemnified out of their trust estate for the cost of repairs done by them on the property in answer to a demand by a sanitary authority, see *in re* Farnham's Settlement (1904, 2 Ch. 561).

19. (1) A trustee of any leaseholds for lives or years which are renewable from time to time, either under any covenant or contract or by custom or usual practice, may, if he thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future or contingent, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same hereditaments on the accustomed and reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite: Provided that, where by the terms of the settlement or will the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

Power of trustees of renewable leaseholds to renew and raise money for the purpose.

(2) If money is required to pay for the renewal, the trustee effecting the renewal may pay the same out of any money then in his hands in trust for the persons beneficially interested in the lands to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose, he may raise the money required by mortgage of the hereditaments to be comprised in the renewed lease, or of any other hereditaments for the time being subject to the uses or trusts to which those hereditaments are

subject, and no person advancing money upon a mortgage purporting to be under this power shall be bound to see that the money is wanted, or that no more is raised than is wanted for the purpose.

(3) This section applies to trusts created either before or after the commencement of this Act, but nothing in this section shall authorise any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

Section 19, Sub-section 1.—Prior to the passing of the Act 23 & 24 Vict. c. 145 (28th August, 1860), in the absence of a direction, either expressed or implied, in that behalf, a trustee of renewable leaseholds was not bound to renew (*O'Ferrall v. O'Ferrall, Lloyd & G., temp. Plunket*, 79). If, however, in such a case the trustee did renew, the renewed lease, although taken by him in his own name or in that of some person acting on his behalf, became subject to the trusts declared of the original term, the trustee having a lien on the estate for the expenses of the renewal, with interest, and a right to be indemnified by the persons beneficially interested against any personal covenants which he might have entered into with the lessor (*Keech v. Sandford*, Sel. Ch. Ca. 61; *Pickering v. Vowles*, 1 Bro. C. C. 197; *Giddings v. Giddings*, 3 Russ. 241).

The principle laid down in *Keech v. Sandford* has also been extended to the purchase by a trustee of the reversion expectant on a lease forming part of his trust estate and which is renewable by custom or contract (*Phillips v. Phillips*, 29 Ch. D. 673; *Bevan v. Webb*, 1905, 1 Ch. 620), but, where the lease is not so renewable, he may, it seems, in the absence of fraud, hold it for his own benefit (*Bevan v. Webb, ante*).

By Section 8 of 23 & 24 Vict. c. 145, it is provided that "It shall be lawful for any trustees of any leaseholds for lives or years which are renewable from time to time either under any covenant or contract, or by custom or usual practice, if they shall in their discretion think fit, and it shall be the duty of such trustees if thereunto required by any person having any beneficial interest, present or future or contingent, in such leaseholds, to use their best endeavours to obtain from time to time a renewed lease of the same hereditaments on the accustomed and reasonable terms, and for that purpose it shall be lawful for any such trustees from

time to time to make or concur in making such surrender of the lease for the time being subsisting, and to do all such other acts as shall be requisite in that behalf; but this section is not to apply to any case where by the terms of the settlement or will the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew the lease or to contribute to the expenses of renewing the same."

And by Section 9 of the same Act it is provided that "In case any money shall be required . . . for renewal of any lease as aforesaid, it shall be lawful for the persons effecting such . . . renewal to pay the same out of any money which may then be in their hands in trust for the persons beneficially interested in the lands . . . comprised in the renewed lease; and if they shall not have in their hands as aforesaid sufficient money for the purposes aforesaid, it shall be lawful for such persons to raise the money required by mortgage of the hereditaments . . . contained in the renewed lease or of any other hereditaments for the time being subject to the subsisting uses or trusts to which the hereditaments comprised in the renewed lease shall be subject, and for the purpose of effecting such mortgage such persons shall have the same powers of conveying or otherwise assuring as are herein contained with reference to a conveyance on sale; and no mortgagee advancing money upon such mortgage purporting to be made under this power shall be bound to see that such money is wanted for the purposes aforesaid."

The provisions of the above-mentioned sections of 23 & 24 Vict. c. 145 were restricted to persons acting under a deed, will, codicil, or other instrument executed after the passing of that Act, or under a will or codicil confirmed or revived by a codicil executed after that date (see Section 34).

Part I. of 23 & 24 Vict. c. 145, including Sections 8 and 9, was repealed by Section 64 of The Settled Land Act, 1882 (45 & 46 Vict. c. 38), which, however, declares that the repeal by that Act of any enactment shall not affect any right accrued or obligation incurred before the commencement of that Act (the 31st of December, 1882), nor shall the same affect the validity or invalidity, or any operation, effect, or consequence of any instrument executed or made before the commencement of that Act.

Section 19 of this Act is, it will be seen, a re-enactment of Section 8 of 23 & 24 Vict. c. 145 (the two sections being almost identical in their terms), and of part of Section 9 of that Act, and also of Sections 10 and 11 of The Trustee Act, 1888. The new provision, however, is not restricted in its effects to trust instruments executed or made after any particular time, but extends to all trust instruments comprising renewable leaseholds, without reference to date (see Sub-section 2 of this section).

The last words of Sub-section 1—"unless the consent in writing of that person is obtained to the renewal on the part of the trustee"—were not contained in Section 8 of 23 & 24 Vict. c. 145. Their effect is to give a limited owner a right to assent to a renewal.

Sub-section 2.—It will be observed that although this sub-section provides for the raising of money required to meet the expenses of renewal by mortgage of the hereditaments for the time being, subject to the subsisting uses or trusts to which the hereditaments comprised in the renewed lease shall be subject, somewhat after the manner of Section 9 of 23 & 24 Vict. c. 145, it does not, like that Act, contain an express power to convey the hereditaments to be mortgaged, and cases may therefore arise where a trustee desirous of raising money for the purpose of renewal will find it difficult to give a security effectual at law as well as in equity.

If, prior to the Act 23 & 24 Vict. c. 145 coming into effect, the trust instrument directed a renewal, but omitted to point out how the necessary expenses were to be levied, the duty of the trustee, unless the persons beneficially interested consented to advance the money required, would have been to raise the fine and other costs of renewal by a mortgage of the renewed term, that being the course which the Court of Chancery always directed to be adopted when the question was brought before it (*Buckeridge v. Ingram*, 2 Ves. 666; *Earl of Shaftesbury v. Dnke of Marlborough*, 2 My. & K. 121; *Allan v. Backhouse*, 2 Ves. & Bea. 72, 79).

A recent case throws considerable light on the question as to how the expenses of renewal should, in the absence of any indication in the settlement or will, be borne as between tenant for life and remaindermen. The case is that of *re Baring, Jeune v. Baring* (1893, 1 Ch. 61), which decides that the fine and attendant expenses ought to be distributed among the beneficiaries according to their enjoyment of the property, which enjoyment may properly be ascertained by actuarial valuation. The case is also a decision that the sections of this Act now under discussion, re-enacting as they do Sections 10 and 11 of The Trustee Act, 1888, do not alter the law as between tenant for life and remaindermen on the point in question, and only deal with the liability of the trustees. This decision practically followed that in *Nightingale v. Lawson* (1 Bro. C. C. 440).

Power of trustee to give receipts.

20. (1) The receipt in writing of any trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying,

transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

(2) This section applies to trusts created either before or after the commencement of this Act.

Section 20.—This is, in effect, a re-enactment of Section 36 of The Conveyancing and Law of Property Act, 1881, that section being repealed by the present Act for the purpose of consolidation.

It will be observed that this section, like the section of the Conveyancing Act which it replaces, extends not only to “money,” but also to “securities or other personal property or effects.”

The expression “securities” includes “stocks, funds, and shares” (see Section 50, *post*).

The repealed section, though retrospective in its operation, so as to include trusts created before the time of its coming into effect, was applicable only to receipts given after that time. In like manner the present section, whilst it includes trusts created before as well as trusts created after the commencement of the Act (the 1st of January, 1894), is nevertheless applicable only to receipts given after such commencement.

The statutory power given by this section is sufficient to supply the place of the power of giving receipts formerly inserted in instruments creating or conferring trusts for or powers of sale (*re* Thomas's Settlement, 30 W. R. 244; 1882, W. N. 7).

The receipt should be under the hands of all the trustees who have consented to act.

If the purchase-money is to be paid to trustees directly, the purchaser may require all of them to attend personally to receive it, or, if that is impossible, may insist upon its being paid to their joint account at some bank of which he approves (*in re* C. Flower and Metropolitan Board of Works, 27 Ch. D. 592).

Trustees may, however, as we have before seen under Section 17 of this Act, appoint a solicitor to be their agent to receive and give a discharge for any money or valuable consideration or property receivable under the trust, by permitting the solicitor to have the custody of and to produce a deed containing any such receipt as is referred to in Section 56 of The Conveyancing and Law of Property Act, 1881.

Section 17 of this Act, however, only applies to the appointment of a solicitor as agent, and trustees are not, generally speaking, justified in appointing one of themselves as agent to receive purchase-money on behalf of all, though perhaps they may do so where the circumstances are such as to make it imperatively necessary (*in re* C. Flower and Metropolitan Board of Works,

27 Ch. D. 592, 597; *ex parte* Belchier, Amb. 219; *Joy v. Campbell*, 1 Sch. & Lef. 341; and *ex parte* Griffin, 2 Gl. & J. 114).

Section 23 of 22 & 23 Vict. c. 35 is apparently still unrepealed, though it is practically superseded as to trustees by this section, as it had in fact already been by the repealed Section 36 of The Conveyancing and Law of Property Act, 1881.

Power for
executors
and trustees
to com-
pound, &c.

21. (1) An executor or administrator may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2) An executor or administrator or two or more trustees acting together, or a sole acting trustee where by the instrument (if any) creating the trust a sole trustee is authorised to execute the trusts and powers thereof, may, if and as he or they may think fit, accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument (if any) creating the trust, and shall

have effect subject to the terms of that instrument, and to the provisions therein contained.

(4) This section applies to executorships, administratorships, and trusts constituted or created either before or after the commencement of this Act.

Section 21.—This section in effect re-enacts Section 37 of The Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), repealed by the present Act, and extends it so as to include administrators.

Sub-section 1.—This sub-section relates exclusively to the nature of the evidence on which an executor or administrator may act with regard to debts alleged to be owing from and claims made upon the estate of his testator or intestate as the case may be in administering that estate.

An executor may, before a decree for administration is obtained, pay a debt barred by the Statute of Limitations without being guilty of a *devastavit*, unless it has been declared by a Court of competent jurisdiction that such debt is barred by the statute (*Midgley v. Midgley*, 1893, 3 Ch. 282).

However, it is very doubtful whether an executor can pay a statute barred debt against the declared dissent of his co-executor (*Midgley v. Midgley*, *ante*).

An executor cannot without committing a *devastavit* pay a creditor who is prevented from enforcing his claim by reason of the Statute of Frauds (*in re Rowson*, *Field v. White*, 29 Ch. D. 358).

An executor may retain a debt owing to him from his testator though Statute barred, and that even after administration decree obtained (*Stahlschmidt v. Lett*, 1 Sm. & G. 415, 420; *Hill v. Walker*, 4 K. & J. 166; *Hunter v. Baxter*, 3 Giff. 214; and *Trevor v. Hutchins*, 1896. 1 Ch. 844).

It seems that the executor's right to retain for his own debt may be asserted not only after the assets have been paid by him into Court, but at any time before the distribution of the estate (*Stahlschmidt v. Lett*, *ante*).

So, too, the mere fact of payment by an executor to the Official Receiver of assets collected by the executor does not necessarily bar the executor's right of retainer any more than payment into Court. Where, therefore, under the usual order made under Section 125 of The Bankruptcy Act, 1883, for the administration

of the estate of an insolvent debtor, and the executrix, who was a creditor of the estate, in ignorance of her right of retainer, paid to the Official Receiver all the assets she had collected, and then set up her right of retainer, it was held that she was entitled to be repaid her debt in full out of the assets in the hands of the Official Receiver (*in re Rhoades, ex parte Rhoades*, 1899, 1 Q. B. 905, and 1899, 2 Q. B. 347).

But an executor cannot retain against creditors of a higher degree than himself, and his right to retain does not extend to assets which he has not got in, nor to equitable assets (*Wilson v. Coxwell*, 23 Ch. D. 764; *in re Jones*, 31 Ch. D. 440; *in re Briggs*, 1894, W. N. 162; *in re Rhoades, ex parte Rhoades*, 1899, 2 Q. B., at p. 354).

But although an executor cannot retain a simple contract debt to the prejudice of a specialty creditor he may, in paying the debts of his testator, prefer a simple contract creditor to a specialty creditor, for *Hinde Palmer's Act* (32 & 33 Vict. c. 46), the object of which was only to place specialty and simple contract creditors on an equal footing *inter se*, in no way deprives an executor of his administrative right to pay his testator's debts in any order he may think fit, and to pay a simple contract creditor in priority to a specialty creditor, notwithstanding that the latter may eventually remain *pro tanto* unpaid (*in re Samson, Robbins v. Alexander*, 1906, 2 Ch. 584).

An executor cannot retain a debt due to himself if he would be unable to recover such debt by reason of the Statute of Frauds (*in re Rowson Field v. White*, 29 Ch. D. 358).

As to the payment of Statute barred debts by trustees see *post*, p. 145.

A simple contract debt due to the Crown ranks in front of simple contract creditors but not of specialty creditors, and for the purpose of administration the assets ought to be first apportioned rateably between the specialty and simple contract debts, and the Crown debt ought then to be taken out of the amount apportioned to the simple contract debts (*in re Bentinck, Bentinck v. Bentinck*, 1897, 1 Ch. 673).

A simple contract creditor who obtains judgment against an executor will, it seems, be entitled to be paid in priority to both specialty and simple contract creditors (*in re Williams' Estate*, 15 L. R. Eq. 270, but see the judgment of Stirling, J., in the case of *in re Bentinck, ante*).

If an executor dies after having claimed a right of retainer, but without having actually exercised it, leaving another executor of the original testator surviving, the executors of the deceased executor have the right of retainer for the benefit of his estate (*Wilson v. Coxwell*, 23 Ch. D. 764).

The legal personal representative of a sole or a sole surviving trustee who has died insolvent and indebted to his trust estate

is not bound and cannot be ordered, unless he has elected to act as trustee or is otherwise in the position of trustee, to exercise in favour of the *cestui que trust* his right of retainer in respect of the debt (*in re* Ridley, *Ridley v. Ridley*, 1904, 2 Ch. 774; *in re* Bennett, *Ward v. Bennett*, 1906, 1 Ch. 216).

Where the legal personal representative of a sole surviving trustee who has died indebted to his trust estate has appointed new trustees, it is doubtful whether the right of retainer is still exercisable (*in re* Bennett, *Ward v. Bennett*, *ante*).

By Section 77 of The Probate Act, 1857 (20 & 21 Vict. c. 77), it is provided that "where any probate or administration is revoked under that Act, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or administration shall be afterwards granted might have lawfully made."

Letters of administration, even if irregularly granted, are valid till revoked.

A creditor of a deceased debtor cannot sue a person named as executor in the will of the deceased unless he has either administered or obtained a grant of probate; and a sale in execution of a judgment obtained against such person does not bind the deceased's estate (*Mahamidu Mohideen Hadjar v. Pichey*, 1894, A. C. 437).

An order for probate without an actual grant thereof does not prove a will; and an application for probate does not show an executor's acceptance of the trusts of the will (*Mahamidu Mohideen Hadjar v. Pichey*, *ante*).

Sub-section 2.—Executors or administrators are considered in law as one person, and any one of them may by his act bind the rest (*Smith v. Everett*, 27 Beav. 446), save with regard to real estate vested in the executors or administrators in their capacity of real representatives (see *Sub-section 2* of *Section 2* of *The Land Transfer Act, 1897*, *post*).

Where there are several trustees appointed, all who accept the office are, in the view of Courts of Equity, acting trustees; and if any one of them, having accepted, declines or becomes incapable of joining in the execution of the trust, it is not competent for the others to act without him. There is no distinction known between an active and a passive trustee, and the rules of equity do not, save perhaps in the case of public trusts, allow some of several trustees, even though they constitute the majority, to bind the rest (*re* *Congregational Church, Smethwick*, 1866, W. N. 196; *Luke v. South Kensington Hotel Co.*,

7 Ch. D. 789, and II Ch. D. 121). It is conceived, therefore, that this sub-section does not, where there are several trustees, enable some of them to exercise the powers conferred by it, without the concurrence of the others, but that the joinder of all will still be necessary.

Sub-section 2 of Section 44 of The Copyhold Act, 1894, however, provides that "where the lords or the tenants are trustees, and one or more of the trustees is abroad or is incapable or refuses to act, any proceedings necessary to be done by the trustees for effecting an enfranchisement under that Act may be done by the other trustee or trustees" (see *The Law as to Copyhold Enfranchisement*, Rudall and Greig, at p. 84).

"Two or more Trustees, acting together, may."—It is submitted that these words must be read as equivalent to "when there are two or more trustees (*i.e.* several trustees), they; acting together, may."

"A sole acting Trustee may."—These words, it is submitted, must be read as equivalent to "where a sole trustee is acting in the execution of trusts, he may"; for, as has already been pointed out, the law knows nothing of an acting trustee, save in the sense of an accepting trustee.

"Where by the Instrument (if any) creating the Trust a sole Trustee is authorised."—Where no express authority is given by the trust instrument to execute the trusts and powers contained in it these words would include an implied authority gathered from the terms of the trust instrument, and there is no express prohibition against one trustee acting alone.

If the trust instrument gives the powers to the "trustees or trustee," a sole trustee would, it seems, be impliedly authorised to act (see *re Garnett, Orme and Hargreaves' Contract*, 25 Ch. D. 595).

The power to compromise applies as much to the claim of a legatee as to debts owing to or from the testator's estate (*re Warren, Weeden v. Reading*, 32 W. R. 916).

The executor of a person who was a partner in a firm, the property of which included real estate, might, it would seem, enter into a compromise with respect to such real estate (*West of England and South Wales District Bank v. Murch*, 23 Ch. D. 138).

In the case of *Abdallah v. Rickards* (4 T. L. R. 622; 32 Sol. J. 526) it was stated that the sub-section did not authorise executors to enter into a compromise with respect to real estate in which they have been given no interest by the testator, or with respect to the validity of the will or the testamentary power of the testator.

It is, however, conceived that an executor or administrator could now enter into a compromise with regard to real estate vested

in him as real representative by virtue of The Land Transfer Act, 1897, at least where such real estate is actually required for the purposes of administration.

Where there was an equitable tenant for life of a house valued at £320 a year, subject to a condition requiring residence, and some of the remaindermen were infants, the Court, being of opinion that the condition was not void under Section 51 of The Settled Land Act, 1882, and that the proposed compromise was within the power conferred on the trustees by this section, held that it could sanction an agreement between the tenant for life and the trustees whereby the tenant for life should release to the trustees her life estate in the house in consideration of their paying to her out of the general trust estate an annuity of £275 (*in re* Trenchard, *Trenchard v. Trenchard*, 50 W. R. 266).

It is, it would seem, competent for an executor, in a proper case and acting reasonably and honestly, to compromise a claim by his co-executor against the estate (*in re* Houghton, *Hawley v. Blake*, 1904, I Ch. 622). But it is doubtful whether such a compromise would be upheld unless it could be shown that it would be for the benefit of the estate (*De Cordova v. De Cordova*, 4 App. Ca. 692); and the position of an executor compromising with his co-executor is a delicate one, and an executor in that position would do well to apply to the Court for direction (*in re* Houghton, *Hawley v. Blake*, 1904, I Ch. 622, 626).

It is apprehended that the question to be considered under this section is whether the trustees or personal representatives have acted in good faith, and that it is not for the trustee or personal representative to show that a particular transaction falling within the section was a proper one, but for the *cestui que trust* impeaching it to show its impropriety (*re* Brogden, *Billing v. Brogden*, 38 Ch. D. 546; 47 L. T. 61, 64).

This section applies to all executorships, administratorships, and trusts, whether constituted or created before or after the time of its commencement; but it only extends to transactions under its powers which take place after that time. The repealed section, which is very similar, except that it does not extend to administrators, was, however, it must be borne in mind, in force from the 31st of December, 1881, down to the commencement of this Act. Prior to the passing of the Conveyancing and Law of Property Act executors had, under Section 30 of 23 & 24 Vict. c. 145, powers similar to those conferred on them by this section.

Independently of any statutory authority, trustees might, where it was for the benefit of the trust estate, release or compound a debt or allow a reasonable time for its payment (*Blue v. Marshall*, 3 P. Wms. 381, and *Forshaw v. Higginson*, 8 De G. M. & G. 827).

Trustees would not, it is apprehended, be liable for refusing a compromise (*ex parte* Ogle, L. R., 8 Ch. 711, at pp. 714 and 715).

Powers of
two or more
trustees.

22. (1) Where a power or trust is given to or vested in two or more trustees jointly, then, unless the contrary is expressed in the instrument (if any) creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2) This section applies only to trusts constituted after or created by instruments coming into operation after the Thirty-first day of December, One thousand eight hundred and eighty-one.

Section 22.—This section is a re-enactment of Section 38 of The Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), so far as that section, which is repealed by the present Act (see Section 51 and Schedule), relates to trustees.

Independently of statutory enactment, where there are several trustees the office of trustee is a joint one, and when one of the trustees dies survives to the others, and the trust, being annexed to the office, survives with it (Co. Litt. 113 a; *Lane v. Debenham*, 11 Ha. 188, 192).

So where a power is conferred on persons, not in their individual capacity, but in their character of trustees, such power will belong to the trustees for the time being (*Byam v. Byam*, 19 Beav. 58, 66).

In the case of *in re Smith*, *Eastick v. Smith* (1904, 1 Ch. 139), where a testator, having appointed three persons executors and trustees of his will, gave and devised all his real and personal estate unto "my said trustees," upon certain trusts, "with full power to my said trustees to sell the whole or any part of my said real and personal estate as they in their absolute discretion may think proper, and apply the proceeds for the use of my wife during her life," and two of the trustees died, and new trustees were appointed in their places, it was held by Mr. Justice Farwell that the power was not personal to the trustees originally appointed, but was annexed to the office, and could be exercised by the trustees or trustee for the time being, the learned Judge dissenting from *Cole v. Wade* (16 Ves. 27), which he thought was inconsistent with the decision of the Court of Appeal in *Crawford v. Forshaw* (1891, 2 Ch. D. 261). *In re Bacon*, *Toovey v. Turner* (1907, 1 Ch. 475), supports the decision in *in re Smith*. A power of sale was given to trustees by name or under the description "my trustees," and the legal estate was devised also to them. The power was held exerciseable by the surviving trustees or the sole surviving trustee.

Where the trust estate passes by survivorship to the surviving trustees, all powers constituting an essential part of the trust are deemed to be annexed to the trust estate and to pass with it (*Lane v. Debenham*, *ante*; *Watson v. Pearson*, 2 Ex. 581, 594).

The survivorship of a trust or power, whether annexed to the office of trustee or to the trust estate, will not, it is apprehended, be defeated because the instrument creating the trust contains a power of appointing new trustees (*Warburton v. Sandys*, 14 Sim. 622).

“*Given to or Vested in Two or more Trustees Jointly.*”—It is conceived that these words mean given to or vested in the trustees in their capacity of trustees, and not as individuals. If this view be a correct one, a bare power—that is, a power given to strangers to the estate—and a power or authority given to several persons *nominatim*, and therefore in their individual capacity, are not within the Act, and will not survive.

The distinction between a “power” and a “trust” was discussed in *Lane v. Debenham* (11 Hare, 188, 191, 195). “Where it is a naked power given to two persons, that will not survive to one of them, unless there be express words, or a necessary implication upon the whole will, showing it to be the intention that it should do so, but the ground of that rule is that where the testator has disposed of his property in one direction, subject to a power in two or more persons enabling them to divert it in another direction, the property will go as the testator has first directed, unless the persons to whom he has given the power of controlling the disposition exercise that power. He, therefore, to whom the testator has given the property subject to having it taken from him by the exercise of the power, has a right to say it must be exercised *modo et forma*. It is, therefore, a rule of law that in all cases of powers the previous estate is not to be defeated unless the power be exercised in the manner specifically directed. When, on the other hand, a testator gives his property not to one party subject to a power in others, but the trustees, upon special trusts, with a direction to carry his purposes into effect, it is the duty of the trustees to execute the trusts; thus, if the direction be to raise a certain sum of money, the estate is thereby at once charged, and it becomes the duty of the trustees to raise the charge so created. If an estate be devised to A. and B., upon trust to sell, and thereby raise a sum, B., after A.’s death, can sell.”

The repealed section of The Conveyancing Act, 1881, applied as well to powers given to executors as to powers given to trustees, whilst the re-enactment extends in terms only to powers or trusts given to or vested in trustees. By Section 50 of the present Act it is provided that, unless the context otherwise requires, the expressions “trust” and “trustee” shall include “the duties incident to the office of personal representative of a deceased person.” However, notwithstanding these somewhat obscure words of definition, it is conceived that the present section does not extend to the case of a

bare power given to executors over a testator's real estate, although such power or authority be given to the executors in their official capacity and not personally; for such a power can hardly be said to be a duty incident to the office of personal representative. It is, therefore, submitted that the law with regard to powers or authorities given to executors over real estate is now on the same footing as it was before the repealed section came into operation. The office of executor or administrator survives (*Adams v. Buckland*, 2 Vern. 514).

It was, before the repealed section came into operation, doubted whether where a mere power is given by a testator to his executors to sell his real estate, such power could be exercised by a sole surviving executor, and that doubt is apparently revived by the repeal of Section 38 of The Conveyancing Act, 1881, without a re-enactment in terms extending to executors. It is, however, submitted that where such a power is given to executors in their official capacity it is annexed to the office and will survive with it, and can therefore be exercised by a single survivor (see Mr. Hargreave's Note to Co. Litt. 113 *a Sugden on Powers*, 8th ed., pp. 126 to 128; and *Crawford v. Forshaw*, 1891, 2 Ch. 261, 265).

Where a power is given to certain persons by name, and they are also appointed executors, it is the duty of the Court to ascertain whether the power is given to the executors in that character or in an individual and personal capacity (*Brassey v. Chalmers*, 16 Beav. 223; and *Crawford v. Forshaw*, 1891, 2 Ch. 261).

Where a power is given to several executors in their official capacity, and one renounces, those persons who prove may exercise the power (*Crawford v. Forshaw*, *ante*).

If a power is annexed to the office of a sole executor, and he renounces, the power is extinguished (*Attorney-General v. Fletcher*, 5 L. J., N. S., Ch. 75).

By Section 79 of The Probate Act, 1857 (20 & 21 Vict. c. 77), it is provided that "where any person after the commencement of this Act renounces probate of the will of which he is appointed executor or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall, and may, without any further renunciation go, devolve, and be committed in like manner as if such person had not been appointed executor."

Section 16 of The Probate Act, 1858 (21 & 22 Vict. c. 95), provides that "whenever an executor appointed in a will survives the testator, but dies without having taken probate, and whenever an executor named in a will is cited to take probate, and does not appear to such citation, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall, and may, without

any further renunciation go, devolve, and be committed in like manner as if such person had not been appointed executor."

It must be borne in mind that an executor or administrator can now for the purposes of administration sell the real estate of his testator or intestate vested in him as real representative under The Land Transfer Act, 1897 (see Sections 1 and 2 of that Act, *post*).

It is clear, however, that all the executors *who have not renounced* probate must concur (*in re* Pawley and London and Provincial Bank, 1900, 1 Ch. 58; see further *in re* Cohen's Executors and London County Council, 1902, 1 Ch. 187; and also *in re* Boucherett, *Barne v. Erskine*, 1908, 1 Ch. 180).

And as to the powers of an executor or administrator as real representative see *post*, Section 2 of The Land Transfer Act, 1897, and the notes thereon.

23. A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying.

Exoneration of trustees in respect of certain powers of attorney.

Provided that nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made, and that the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

Section 23.—This section is, in effect, a re-enactment of Section 26 of 22 & 23 Vict. c. 35, so far as that section, which is repealed by the present Act (see Section 51 and Schedule), extended to trustees.

The section, it is apprehended, does little more than express the rule of equity, for the Court would probably be slow to fix

with liability a trustee who acted under a power of attorney in good faith and without knowledge of the death of the principal.

A power of attorney may be revoked either by the express declaration of the principal or by implication.

If a power of attorney is given by deed, it should be revoked by deed, though in strictness perhaps this is not absolutely essential, since the grantee of a power of attorney is bound to follow the wishes and directions of the grantor ("The Margaret Mitchell," Swab. 382).

Where a power is executed for valuable consideration it cannot be expressly revoked whilst the consideration holds (*Bromley v. Holland*, 7 Ves. 28).

A power of attorney will be impliedly revoked—

1. Where the principal ceases to have power over the subject-matter of the power.
2. By the insanity of the principal.
3. By the principal becoming bankrupt.
4. By the death of the principal.

As to the effect of supervening insanity of the principal see *Jarman's Bythewood*, Vol. VIII., pp. 36, 37; and as to payments made or acts done in pursuance of a power of attorney without notice of the principal having become lunatic or of unsound mind see Section 47 of The Conveyancing and Law of Property Act, 1881, hereinafter referred to.

As to the effect of the bankruptcy of the principal upon a power of attorney see *ex parte* Snowball (L. R., 7 Ch. 534); *Markwick v. Hardingham* (15 Ch. D. 339); and *Elliott v. Turquand* (7 App. Ca. 79).

A sale under a power of attorney to a *bonâ fide* purchaser without notice of an act of bankruptcy committed by the giver of the power would be good as against the trustee under a subsequent adjudication (see *ex parte* Snowball, *ante*).

Where the power forms the security for a debt, or was executed for valuable consideration, it will not be revoked by the principal's bankruptcy (*Alley v. Hotson*, 4 Campb. 325).

Where a power of attorney is given by a company winding up proceedings would not, it is apprehended, render invalid payments made or acts done under the power by persons having no notice of such proceedings (*in re* Oriental Bank Corporation, 28 Ch. D. 634, 640).

At common law a power of attorney, even though coupled with an interest, was revoked by the principal's death (*Watson v. King*, 4 Campb. 272); but the contrary is said to be the law of equity. However, in the case of *Spooner v. Sandilands* (1 Y. & C. C. 390),

in which the point came directly before the Court, it was apparently held that the power was revoked both at law and in equity by the principal's death, but that the letter of attorney operated not only to confer a power, but also as a charge.

In the case of *Kiddill v. Farnell* (3 Sm. & G. 428) a clause in a power of attorney, in the usual form issued by the Bank of England for the transfer of stock, to make it good notwithstanding the death of the grantor before transfer was held effectual.

Section 26 of 22 & 23 Vict. c. 35 extended to executors and administrators as well as to trustees, whilst this section extends in terms only to trustees. However, the expression "trustee" in this Act includes an executor or administrator acting in the duties incident to the office of personal representative of a deceased person. By Section 47 of The Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), a general protection is given to every person making or doing any payment or act in good faith in pursuance of a power of attorney, notwithstanding that before the payment or act the donor of the power had died, or become lunatic, of unsound mind, or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making the same.

Under the provisions contained in Sections 8 and 9 of The Conveyancing and Law of Property Act, 1882, a power of attorney may now, by the instrument creating it, be made absolutely irrevocable when given for valuable consideration, or irrevocable for a fixed time not exceeding one year, whether given for valuable consideration or not.

24. A trustee shall, without prejudice to the provisions of the instrument (if any) creating the trust, be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default ;

Implied
indemnity
of trustees.

and may reimburse himself, or pay or discharge out of the trust premises, all expenses incurred in or about the execution of his trusts or powers.

Section 24.—This section is, in effect, a re-enactment of Section 31 of 22 & 23 Vict. c. 35, that section being repealed by the present Act (see Section 51 and Schedule).

This section, like the repealed one, only expresses the rule of the Court of Equity (*re Brier, Brier v. Evison*, 26 Ch. D. 238, 243). Before the repealed enactment came into operation all well-drawn trust instruments contained an indemnity clause to a like effect with the indemnity given by Statute.

At law, where trustees join in a receipt, *primâ facie* all are to be considered as having received the money; but the rule of Courts of Equity is that the mere circumstance of a trustee joining in a receipt *for the sake of conformity*, without receiving the moneys to which such receipt relates, is not sufficient to charge him in the event of a misapplication by the trustee who actually receives (*Brice v. Stokes*, 11 Ves. 319, 324; *re Fryer, Martindale v. Picquot*, 3 K. & J. 317). The trustee, however, to exonerate himself, must show that the money acknowledged to have been received by all was, in fact, received by the other trustees, and that he joined only *for conformity* (*Brice v. Stokes, ante*).

Although a trustee may not be chargeable simply by reason of his allowing his co-trustee to receive moneys of the trust, he will become liable for misapplication, if, in breach of his duty, he allow his co-trustee to retain such moneys for a longer period than the actual circumstances require (*Brice v. Stokes, ante*; *Lincoln v. Wright*, 4 Beav. 427), or fail to see that they are properly applied for the purposes of the trust (*Thompson v. Finch*, 22 Beav. 316).

Trustees are not bound personally to transact such business connected with or arising out of the proper duties of their trust as, according to the usual mode of conducting business of a like nature, persons, acting with usual care and prudence on their own account, would ordinarily conduct through mercantile agents; and when according to the usual and regular course of such business moneys receivable or payable ought to pass through the hands of such mercantile agents, that course may properly be followed by trustees, though the moneys are trust moneys (*ex parte Belchier*, Amb. 218; *Speight v. Gaunt*, 9 App. Ca. 1, 4; and see also *The Judicial Trustees Act, 1896, Section 3*, and notes thereto, *post*).

A trustee is justified in depositing trust moneys for temporary purposes in the hands of bankers of good credit (*Rowth v. Howell*, 3 Ves. 565; *Wilks v. Groom*, 3 Dr. 584, 592; *Swinfen v. Swinfen*,

No. 5, 29 Beav. 211); but the moneys should be paid into the separate account of the trust, and not mixed with the trustee's own moneys (*ex parte* Kingston, *in re* Gross, L. R., 6 Ch. 632).

Where an administrator deposited moneys (part of his intestate's estate) with bankers on a current account separate from his own account, the bankers allowing half-yearly interest on the moneys for the time being standing on such current account the administrator was held not liable for the fund which was lost owing to the failure of the bank (*re* Marcon's Estate, *Finch v. Marcon*, 1871, W. N. 148).

The section, however, does not extend its indemnity to cases of wilful default, and a trustee is therefore still liable, in the event of the failure of the bankers, if he allows money to lie in the bankers' hands when he ought to have invested it (*Moyle v. Moyle*, 2 Russ. & My. 710; and *Cann v. Cann*, 33 W. R. 40), or if he leave it in the hands of the bankers when he ought to have paid it over to other parties, as, for instance, to new trustees duly appointed (*Lunham v. Blundell*, 4 Jur., N. S., 3), or if he lend moneys to the bankers by way of loan on their personal security (*Darke v. Martyn*, 1 Beav. 525). Should he keep a larger balance at the bankers than is reasonably necessary for the purposes of the trust he would, in the event of the bankers failing, be liable to make good what the Court might consider to be the excess over the sum which he ought to have had in the bank (*Astbury v. Beasley*, 1869, W. N. 96).

In the case of *re* Jones, *Jones v. Searle* (49 L. T., N. S., 91), it was held that trustees were liable to pay interest on trust moneys which they had mixed with moneys of their own and left in the hands of their bankers.

Where trustees are expressly authorised to retain or invest in convertible securities, such as bonds transferable by delivery with coupons attached, they may deal with them in the way usual with prudent men of business, and may deposit them in their joint names with the bankers to the trust, upon a simple acknowledgment by the bankers of the receipt thereof (*in re* De Pothonier, *Dent v. De Pothonier*, 1900, 2 Ch. 529).

But trustees would not be justified in allowing bonds of the nature above mentioned to remain in the hands of a solicitor, since it is not a part of the duty of a solicitor to cut off coupons and collect, while it is part of the duty of a banker (*in re* De Pothonier, *ante*).

A trustee investing trust funds is justified in employing a broker to procure securities authorised by the trust, and in paying the purchase-money to the broker, if he follow the usual and regular course of business adopted by ordinarily prudent men in making such investments (*Speight v. Gaunt*, 9 App. Ca. 1, 4). A trustee may employ a solicitor, auctioneer, or stockbroker (see *re* Blundell, *Blundell v. Blundell*, 40 Ch. D. 370, 376).

A trustee is also justified in employing an agent to collect debts due to the trust estate (*re* Brier, *Brier v. Evison*, 26 Ch. D. 238, 243).

The rule that trustees acting according to the ordinary course of business, and employing agents as prudent men of business would do on their own behalf, are not liable for the default of the agent so employed, is subject to the limitation that the agent must not be employed out of the ordinary scope of his business (*Fry v. Tapson*, 28 Ch. D. 268).

In a Scotch case (*Carruthers v. Carruthers*, H. L. (Sc.), 1896, A. C. 659) it was held that where a testator gave power to his trustees to appoint a factor to the estate, who might be one of themselves, but directed them to require annual accounts, and the trustees failed to call for such accounts, they were guilty of *culpa lata* and liable for the sums lost (see also *Wyman v. Paterson*, 1900, A. C. 271, 279).

Where the solicitor does not recommend the security or take upon himself to advise as to its sufficiency he is apparently not liable, even though the mortgage money is actually paid through him (*Rae v. Meek*, 14 App. Ca. 558; and *Briusden v. Williams*, 1894, 3 Ch. 185), but a solicitor who knows or ought to know that the security proposed for trust funds is not of a character suitable for their investment, and is one which the trustees could not properly sanction, is liable for the sufficiency of the security (*Blyth v. Fladgate*, 1891, 1 Ch. 33; and *Hardy v. Caley*, 33 Beav. 365).

A trustee who selects as his agents persons properly qualified cannot be made responsible for their intelligence or their honesty; but he cannot entrust them with any duties which they may be willing to undertake, or pay them any remuneration which they may demand, and he is bound to exercise his discretion in the matter (*re* Weall, *Andrews v. Weall*, 42 Ch. D. 674).

In the case of *Bostock v. Floyer* (L. R., 1 Eq. 26) a trustee was held liable for the loss, through the fraudulent conduct of his solicitor, of trust moneys which he had handed to his solicitor for investment, the reason of the decision apparently being that it was not placed in the solicitor's hands for a specific investment, and that it is not the ordinary course of business for a trustee to place money in the hands of a solicitor to invest (see *in re* Speight, *Speight v. Gaunt*, 22 Ch. D., at p. 761). It is but an application of the principles above stated that a trustee is not liable for loss occasioned to the trust estate by the felonious acts of his servant, provided such servant is properly entrusted with the custody of the trust property and is selected and employed without neglect (*Jobson v. Palmer*, 1893, 1 Ch. 71). This case also shows that the liability of a trustee is not increased by the fact of his being remunerated for his services. Where trust money has got into the hands of a solicitor who has accepted the money on loan without security, and who knows it is trust money, the Court can, though

the solicitor is not a party to an action relating to the money, order him to pay into Court (*in re* Carroll, *Brice v. Carroll*, 1902, 2 Ch. 175).

In the case of *Shepherd v. Harris* (53 W. R. 570) it was held that a trustee is not liable for the fraud of a broker (where the latter having been instructed to buy inscribed stock) the former has done all that could be expected of an ordinary prudent man to see that the investment has in fact been made, and the fact that a share of the commission has been accepted from the broker co-trustee, who is entitled to remuneration under the terms of the trust deed, does not affect his liability. In that case the will creating the trust contained a provision to the effect that the trustees might, in their uncontrolled discretion, employ a solicitor or any other person to transact any business or do any act of whatever nature required to be done in the execution of the trusts, including the receipt and payment of money, and that any trustee of the will being a solicitor or other person engaged in any profession or business might be so employed or act.

In the absence of special circumstances, a trustee is not entitled to have title deeds and non-negotiable securities removed from the custody of a co-trustee and placed at a bank in a box accessible only to the trustees jointly (*in re* Sisson's Settlement, *Jones v. Trappes*, 1903, 1 Ch. D. 262).

Where a trust has been created, the trustees are the proper parties to hold the deeds, and their right to them will prevail even against a solicitor claiming a lien upon them for costs incurred for the creators of the trust (*in re* Lawrance, *Bowker v. Austin*, 1894, 1 Ch. 556; see also *in re* Snell, 6 Ch. D. 105; and *re* Mason & Taylor, 10 Ch. D. 729).

As to the common law right of one joint tenant to retain possession of the title deeds against the other see *Foster v. Crabb* (12 C. B. 136).

As to the duty of trustees with regard to the custody of title deeds see *Field v. Field* (42 W. R. 346) and *Tendring Hundred Waterworks Company v. James* (1903, 2 Ch. 615).

“*Money and Securities actually received by him.*”—The expression “securities” includes stocks, funds, and shares (see Section 50. *post*).

“*And may reimburse himself, or pay or discharge out of the trust premises, all expenses incurred in or about the execution of his trusts or powers.*”—Independently of statutory enactment, a trustee is, by the rules of equity, entitled to reimburse himself out of the trust estate all costs, charges, and expenses properly incurred by him in the administration of the trust; for, in the words of Lord Cottenham, in the case of the Feoffees of Heriot's Hospital *v. Rose* (12 Cl. & Fin. 507, at p. 515), the first object of a trust is to indemnify those who administer it against any costs properly

incurred in its administration. Where the assets are insufficient in an administration action for the payment of the costs of all parties the trustees are entitled to payment of their costs, charges, and expenses in priority to the plaintiff's solicitors (*in re Turner*, Wood *v.* Turner, 1907, 2 Ch., p. 126; and see also p. 539 for the order made in the action).

A trustee is entitled to be indemnified by his *cestuis que trust* personally against costs and expenses properly incurred (*ex parte Chippendale*, *re* German Mining Co., 4 De G. M. & G. 19, at p. 54).

Where a trustee has incurred a liability in performance of his duty, it seems that the Court would compel his *cestui que trust* to give him an indemnity, although no loss had actually accrued (*Phéné v. Gillan*, 5 Ha. 1, 12, 13).

A trustee is entitled to his expenses notwithstanding that an annuity is given to him under the trust instrument as a recompense for the care and trouble which will attend the due execution of his office (*Wilkinson v. Wilkinson*, 2. S. & S. 237).

Trustees should keep careful accounts of their disbursements on account of the trust, as it is the duty of trustees to furnish accounts to their beneficiaries (see *Springett v. Dashwood*, 2 Giff. 521; *Clarke v. Ormond*, Jac. 120; *Pearse v. Green*, 1 J. & W. 140; and *Banks v. Cartwright*, 1867, W. N. 27).

The duty of trustees in this respect is shortly as follows:—

A trustee must—

- (a) Keep clear and accurate accounts of the trust property; and
- (b) At all reasonable times at the request of the beneficiary furnish him with full and accurate information as to the amount and state of the trust property; and
- (c) Permit the beneficiary or his duly authorised agent to inspect and take copies of or extracts from the accounts and vouchers and other documents relating to the trust.

The beneficiary must pay the cost of obtaining any such information or of making copies of or extracts from the accounts, vouchers, and other documents relating to the trust required by him, and a trustee is entitled to have such costs secured before complying with any such requisition. If proceedings on the part of the beneficiary are necessitated by the gross and indefensible neglect of the trustees to deliver accounts, the defaulting trustee may be ordered to pay all the costs, including the costs of taking and vouching the accounts (*in re Skinner*, *Cooper v. Skinner*, 1904, 1 Ch. 289). A trustee taking counsel's opinion to guide himself in the administration of his trust, and not for the purpose of his defence in a litigation against himself, is bound to produce them to his *cestui que trust* (*Wynne v. Humbertson*, 27 Beav. 421).

If a trustee is attacked he can appear by two counsel (*in re Maddick, Butt v. Wright*, 1899, 2 Ch. 588).

On an application by a neutral trustee for the direction of the Court or as to the rights or interests of beneficiaries the same counsel should not appear both for a beneficiary and for the trustee (*in re Burton, Danby v. Burton*, 1891, W. N., p. 202).

On winding up a trust a trustee is entitled to have his accounts examined and settled by the beneficiaries, and either to have a formal discharge given him or to have the accounts taken in Court. He cannot, however, claim a release under seal, although it is usual to give one (see ———— *v. Osborne*, 6 Ves. 455; *Chadwick v. Heatley*, 2 Coll. 137; *re Cater's Trust*, 25 Beav. 366; and *King v. Mullins*, 1 Dr. 311).

A trustee has a right to pay costs which have become Statute barred (see *Budgett v. Budgett*, 1895, 1 Ch. 202). In that case by the judgment in an action it was referred to the Taxing Master to tax as between solicitor and client the costs of the retiring trustees of a settlement, including therein any charges and expenses which had been properly incurred by them as such trustees, and they were to pay and retain such costs when taxed out of the capital moneys subject to the trusts of the settlement. The bill of costs carried in by the trustees included items of costs which were Statute barred. Some of these amounts had been actually paid by the trustees to their solicitor after they were barred, and others remained unpaid, but the trustees desired to pay them. It was held that the object of the direction for taxation was to give effect to the trustees' right to indemnity, which extended not merely to claims which could be enforced by action *but to all fair claims of every kind*, and that therefore these costs, which the trustees had properly incurred, and which were paid or payable to their solicitors, ought, notwithstanding that they were Statute barred, to be included in the costs which were to be paid and retained out of the capital moneys subject to the settlement.

It is a rule of the Courts of Equity that a trustee, executor, or administrator shall have no allowance for his care and trouble, the reason being that on these pretences, if allowed, the trust might be loaded and rendered of little value, besides the great difficulty there might be in settling and adjusting the quantum of such allowance, especially as one man's time may be more valuable than that of another. There can be no hardship in this respect upon any trustee, who may choose whether he will accept the trust or not (*Robinson v. Pett*, 3 P. Wms. 132; *Moore v. Frowd*, 3 My. & Cr. 50; *re Imperial Land Co. of Marseilles*, 4 Ch. D. 566, 580; and *Barrett v. Hartley*, L. R., 2 Eq. 789).

So, also, Courts of Equity applying the rule, which is of universal application, that no one having fiduciary duties to discharge shall

be allowed to enter into engagements in which he has or can have any personal interest conflicting or which possibly may conflict with the interests of those whom he is bound to protect (*Aberdeen Railway Co. v. Blaikie Brothers*, 1 Macq. 461, 471; *Broughton v. Broughton*, 5 D. M. & G. 160, 164; *Moore v. Frowd*, 3 My. & Cr. 45), will not allow a trustee to make a profit by his dealings with the trust estate.

For instance, a trustee of a will carrying on his testator's business under a direction in that behalf contained in the will, will not be allowed to make a profit by supplying goods for the purposes of the business.

But in such a case the testator may by a special clause in his will authorise his trustees to retain a profit so made (*in re Sykes*, *Sykes v. Sykes*, 1909, 2 Ch. 241).

In the last-mentioned case the testator carried on the business of a licensed victualler, and also, in partnership with his brother, the business of a wine and spirit merchant, and in connection with his business of licensed victualler he purchased from the partnership business wines and spirits at prices below the market value of the goods. By his will he appointed his two brothers and his sister executors and trustees thereof, and devised and bequeathed his residuary estate to his trustees upon trust to carry on his business of licensed victualler for a period not exceeding ten years from his death with all the powers in that behalf of absolute owners, and he declared that his trustees might exercise all powers and discretions thereby or by law given to them, notwithstanding that they or any of them might have a personal interest in the mode or result of exercising such power or discretion. The trustees carried on the testator's business of a licensed victualler under the terms of the will, and the wine and spirit business was continued by the two brothers, who supplied the testator's licensed houses with wines and spirits at a profit, but at less than current market prices; and it was held that the brothers were entitled to retain the profit arising from such supply by virtue of the special clause at the end of the will, but not upon the ground stated in *Smith v. Langford* (2 Beav. 362).

In that case, too, Cozens-Hardy, M. R., expressed the opinion that *Smith v. Langford* can no longer be treated as a binding authority.

It is similarly a rule of equity that a trustee, executor, or administrator may not make any profit out of his trust by acting in his professional or business capacity in the matters of the trust (*Scattergood v. Harrison*, Mos. 128; *Sherriff v. Axe*, 4 Russ. 33; *Kirkman v. Booth*, 11 Beav. 273; and *Bainbrigg v. Blair*, 8 Beav. 588, 596).

So a solicitor trustee cannot by himself, or, if he carry on business in partnership, by his firm, make any charge against his *cestui que trust* except for costs out of pocket (*Bainbrigg v. Blair*,

ante; *Todd v. Wilson*, 9 Beav. 486; *Pollard v. Doyle*, 1 Dr. & Sm. 319; *Broughton v. Broughton*, 5 De G. M. & G. 160; and *Burge v. Brutton*, 2 Ha. 373).

The reason why the Court declines to allow a solicitor trustee acting for himself as trustee to make the usual professional charges against the trust fund is, that to do so would be to place a party having a duty conflicting with his interest in the position of having to make out his own bill against himself, leaving any error which might occur to be settled and set right at some future occasion (*Bainbrigge v. Blair*, 8 Beav. 588).

The rule applies equally where the matter is carried through exclusively by a partner of the solicitor trustee who is not concerned in the trust, for what is done is done for the profit of the trustee as partner (*Christopher v. White*, 10 Beav. 523, 525).

Where, however, a solicitor trustee is carrying on business in partnership, and it is stipulated between the partners that a partner being a trustee is not to share in the profits of or to take any benefit from business done in respect of any matter where he is a trustee, the trustee partner may employ his partner to act as solicitor to the trust, and pay him the ordinary remuneration (*Clack v. Carton*, 30 L. J., N. S., Ch. 639).

A solicitor who is a trustee, executor, or administrator is under no obligation to act in his professional capacity, but may employ another solicitor to act in the matter of the trust or in winding up the estate (*Stanes v. Parker*, 9 Beav. 389).

Where a solicitor trustee, without power to charge, employs another solicitor to act in the matter of the trust, and, by arrangement, receives from him a proportion of the profit costs, such trustee can be called upon by the beneficiaries to account for the sum received (*in re Thorpe, Vipont v. Radcliffe*, 1891, 2 Ch. 360).

It seems that where a solicitor trustee acts as solicitor, not for himself alone, but for the whole body of trustees, in legal proceedings relating to the trust estate, he is entitled to his profit costs (*Cradock v. Piper*, 1 M. & G. 644). This exception to the general rule that a trustee is only entitled to his out-of-pocket expenses extends apparently not only to proceedings in a hostile suit, but to friendly proceedings in chambers (*in re Corsellis, Lawton v. Elves*, 34 Ch. D. 675).

But where a trustee solicitor introduced the business of the trust estate to a firm of solicitors on the terms that he should receive a commission on any business connected with the trust estate, and certain actions having been instituted in which the firm acted as solicitors on the record, and the trustee received a sum representing his share of the taxed costs of the action, it was held that although the trustee might, if he had been the solicitor on the record, have been entitled under the decision in *Cradock v. Piper* to the sum paid to him, still, being in a sense the solicitor on the record, the sum so paid to him constituted a profit made either directly or

indirectly through his office as trustee for which he was accountable to the trust estate (*Vipont v. Butler*, 1893, W. N. 64).

A trustee who is a professional man may, however, *be expressly authorised by the instrument creating the trust to act in his professional capacity* in relation to the trust estate, and to *charge* in the same manner as if he had not been a trustee (see the judgment in *Broughton v. Broughton*, 5 De G. M. & G. 166, and the observations of Lord Hatherley in *The Imperial Mercantile Credit Association v. Coleman*, L. R., 6 Ch. 570).

In all properly drawn instruments appointing professional men as trustees there is inserted a power authorising such a person, if a trustee, to make his usual charges.

To entitle a solicitor trustee, acting as a solicitor to the trust estate under a direction to that effect in a will, to charge against the estate for work done by him, which although not professional work he could have charged for without any special bargain against a client who was not a trustee, there must be express words in the will showing that such was the testator's intention (*in re Chalinder & Herington*, Solicitor, 1907, 1 Ch. 58).

The cases of *in re Ames*, *Ames v. Taylor* (25 C. D. 72), and *in re Fish*, *Bennett v. Bennett* (1893, 2 Ch. 413), show the limits of the rules as to the remuneration of solicitor trustees.

A solicitor who is the sole executor and trustee of a will is not entitled to his profit costs of acting as solicitor to the estate if it turns out to be insolvent, even though the will contains a clause declaring that he should be solicitor to the estate, and should be allowed to charge for work done as such solicitor, for the clause is in effect a legacy of profit costs to the solicitor, and being bounty he cannot claim it as against creditors (*in re White*, *Pennell v. Franklin*, 1898, 2 Ch. 217). The same rule applies to all professional trustees.

In like manner a solicitor mortgagee could not, before the coming into operation of The Mortgagees Legal Costs Act, 1895 (58 & 59 Vict. c. 25), charge profit costs against the mortgagor, either as to proceedings in an action or business done out of Court (*in re Wallis*, 25 Q. B. D. 176; *in re Doody*, 1893, 1 Ch. 129; *Eyre v. Wynn-Mackenzie*, 1894, 1 Ch. 211).

The rule is not limited to solicitors, but it extends to any mortgagee who is capable of giving, and who does give, his own personal services in relation to the mortgage debt or security. For instance, if a mortgagee were a surveyor he could not charge for surveyor's work done by himself, though he could charge for the same work if he had employed another surveyor to do it (*in re Wallis*, 25 Q. B. D. 176, 180, 182).

It would seem, however, that the partner of a solicitor mortgagee might have received remuneration for his trouble, and that, in the absence of any agreement that the solicitor mortgagee was not to share in the profits arising from the transaction in question, the

proper course was to ascertain what the profit costs were, and then to allow the other partner the same share in them as he was entitled to in the general profits of the partnership business (*in re Doody*, 1893, 1 Ch. 129).

The Mortgagees Legal Costs Act, 1895 (58 & 59 Vict. c. 25), provides as follows:—

2. (1) Any solicitor to whom, either alone or jointly with any other person, a mortgage is made, or the firm of which such solicitor is a member, shall be entitled to receive for all business transacted and acts done by such solicitor or firm in negotiating the loan, deducing and investigating the title to the property, and preparing and completing the mortgage, all such usual professional charges and remuneration as he or they would have been entitled to receive if such mortgage had been made to a person not a solicitor, and such person had retained and employed such solicitor or firm to transact such business and do such acts; and such charges and remuneration shall accordingly be recoverable from the mortgagor.

(2) This section applies only to mortgages made after the commencement of this Act.

3. (1) Any solicitor to or in whom, either alone or jointly with any other person, any mortgage is made or is vested by transfer or transmission, or the firm of which such solicitor is a member, shall be entitled to receive and recover from the person on whose behalf the same is done, or to charge against the security for all business transacted and acts done by such solicitor or firm subsequent and in relation to such mortgage, or to the security thereby created, or the property therein comprised, all such usual professional charges and remuneration as he or they would have been entitled to receive if such mortgage had been made to and had remained vested in a person not a solicitor, and such a person had retained and employed such solicitor or firm to transact such business, and do such acts, and accordingly no such mortgage shall be redeemed, except upon payment of such charges and remuneration.

(2) This section applies to mortgages made and business transacted and acts done either before or after the commencement of this Act.

4. In this Act the expression “mortgage” includes any charge on any property for securing money or money's worth.

The Mortgagees Legal Costs Act, 1895, does not extend to Scotland.

In the case of *Eyre v. Wynn-Mackenzie* (1896, 1 Ch. 135), application for leave to appeal against a judgment dated the 28th of November, 1893, notwithstanding the expiration of the time limited for so doing, on the ground that since the judgment The Mortgagees Legal Costs Act, 1895, had been passed, by which the law as to a solicitor mortgagee's costs had been altered, was refused by the Court of Appeal, on the ground that, though Section 3 of the Act is retrospective in its operation, it could not have been intended to affect judgments of the Court which were right at the time they were given.

It will be observed that the Act in question only relates to professional work done by solicitor mortgagees, and not to work or business by other mortgagees who may be professional men.

The case of *Wright v. Carter* (1903, 1 Ch. 27, 49 *et seq.*) shows under what circumstances a *gift* by a client to his solicitor is permissible. A *purchase* by a solicitor from his client is good if (1) the client is fully informed; (2) the client had competent independent advice; and (3) the price given was a fair one (see *Wright v. Carter*, the judgment of Stirling, L. J., at p. 60).

As to how far the innocent partner of a solicitor or trustee committing a fraud upon the trust can be made liable see *Tendring Hundred Waterworks Company v. Jones* (1903, 2 Ch. 615).

Liability of Trustees of a Club, and right of indemnity by Members of the Club.—The recent case of *Wise v. Perpetual Trustee Company, Limited* (1903, A. C. 139), contains a useful compendium of the law governing the relations of trustees of a club and the members of it. *Inter alia*, it lays down that trustees of a club who have incurred liability under onerous covenants contained in a lease, accepted by them on its behalf, are entitled to indemnity out of any property of the club to which their lien as trustees extends. Its members are not, by reason only of being *cestuis que trust*, personally liable to indemnify them, where there is no rule imposing such liability on them.

PART III.

POWERS OF THE COURT.

Appointment of New Trustees and Vesting Orders.

25. (1) The High Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the Court, make an order for the appointment of a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee. In particular and without prejudice to the generality of the foregoing provision, the Court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony, or is a bankrupt.

Power of
the Court
to appoint
new
trustees.

(2) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(3) Nothing in this section shall give power to appoint an executor or administrator.

Section 25.—This part of the Act deals with the important powers vested in the Court of appointing new trustees, whether in a pending action or on application by originating summons. It and the following sections replace the hitherto unrepealed sections of The Trustee Act, 1850.

This section itself replaces Sections 32, 33, and 36 of The Trustee Act, 1850 (13 & 14 Vict. c. 60); Sections 8 and 9 of The Trustee Act, 1852 (15 & 16 Vict. c. 55); Section 322 of The Irish Bankrupt and Insolvent Act, 1857 (20 & 21 Vict. c. 60); and Section 147 of The Bankruptcy Act, 1883 (46 & 47 Vict. c. 52).

The power is exercisable by the Court "whenever it is expedient to appoint a new trustee or new trustees, and it is found *inexpedient, difficult, or impracticable* to do so without the assistance of the Court." It must, however, be borne in mind that the Court has, independently of statutory enactment, an inherent jurisdiction to appoint trustees (*Dodkin v. Brunt*, L. R., 6 Eq. 580; *Buchanan v. Hamilton*, 5 Ves. 722; and *Hibbard v. Lambe*, Amb. 309).

Where there is a valid existing power of appointing new trustees, and a person willing to exercise it, the Court will not exercise the power conferred by this section (*re Sutton*, 1885, W. N. 122; *re Gibbons's Trusts*, 1882, W. N. 12; *in re Higginbottom*, 1892, 3 Ch. 132).

The power of the Court only comes into play when there is *no person who will exercise the power*, for the Court will not intervene and appoint where there is a valid power of appointment, merely upon the suggestion that it will be improperly exercised (*re Hodson's Trust*, 9 Ha. 118). But if the trustees are resident out of the jurisdiction, the Court will appoint (*re Humphrey's Estate*, 1 Jur., N. S., 921).

Moreover, contrary to many decided cases, it is now clear that the Court will not, where new trustees have already been appointed out of Court under a valid power, reappoint them for the purpose of making a vesting order (*re Vicat*, 33 Ch. D. 103; *re Dewhurst's Trusts*, 33 Ch. D. 416; and *re Gardiner's Trusts*, 33 Ch. D. 590), though it may be proper to, and the Court will, where there is any reasonable question whether trustees appointed under a power have been duly appointed, reappoint them (see *Cotton*, L. J., *re Vicat*, *ante*); or the course adopted in *re Stocken's Settlement Trusts* (1893, W. N. 203) may be followed where one of the newly appointed trustees retired, and the Court appointed a person in his place, though it is not an advisable course to adopt.

In the Irish case of *in re Kenny's Trusts* (1906, 1 Ir. R. 531), it was, however, held that the jurisdiction of the Court to make a vesting order under Section 26 of this Act embraces a case where the trustees in whom the property is to be vested have been already appointed. And Order 55 of the Rules of the Supreme Court, Rule 13a, it must be borne in mind, provides that an application for a vesting order or other order consequential on the appointment of a new trustee may be made by summons, whether the appointment is made by the Court or a Judge *out of Court*.

In an action to administer a trust the Court has jurisdiction to discharge a trustee without appointing a new trustee in his place; but this cannot be done under this section of The Trustee Act, 1893,

as it is not the practice to reappoint continuing trustees in place of themselves and a retiring trustee (*in re Chetwynd's Settlement, Scarisbrook v. Nevinson*, 1902, 1 Ch. 692).

The Probate Division will grant letters of administration to the *cestui que trust* of a trust fund, limited to that fund, after the death of the trustee, on the consent of his personal representatives, and so avoid the necessity of the appointment of new trustees (*re Ratcliffe*, 1899, P. 110).

The Court will not, on any application for the appointment of new trustees, enter into the question of the validity of the instrument creating the trust (*re Matthews*, 26 Beav. 463).

The following persons have been held to be trustees, in addition, of course, to the cases where they are obviously so:—

- (A) A trustee of a composition deed; a trustee of a deed registered under The Bankruptcy Act, 1861; and a bankrupt's assignee (*re Price*, L. R., 6 Eq. 460; *re Bache*, 1868, W. N. 223; *re Donisthorpe*, L. R., 10 Ch. 55; *re Joyce's Estate*, L. R., 2 Eq. 576).
- (B) A vendor of land where the title is clear (*re Lowry's Will*, L. R., 15 Eq. 78; *re Russell*, 12 Jur., N. S., 224), or the contract has been executed (*re Cumming*, L. R., 5 Ch. 72), or where it has been the subject of an award (*re Taylor*, 1886, W. N. 5); but if the title is not clear it must be established in a suit (*re Carpenter, Kay* 418; *re Weeding*, 4 Jur., N. S., 707; *re Faulder*, 1866, W. N. 83). And in the case of *in re Ruthven's Trusts* (1906, 1 Ir. R. 236) it was held that where a person had agreed for valuable consideration to convey real estate and he was bound by a decree *in personam* of a Scotch Court to convey, he is a constructive trustee, and as such a trustee within Section 26 of this Act.
- (C) A vendor of copyholds who has covenanted to surrender, and has received the price (*re Collingwood's Trusts*, 6 W. R. 536; *re Cumming, ante*). But a vendor who has not received the price, and who dies, would not be a trustee for the purposes of this Act, in accordance with decisions on the repealed Trustee Act of 1850 (*re Colling*, 32 Ch. D. 333).
- (D) A vendor or constructive trustee of stocks or shares or a legacy (*re Angelo*, 5 De G. & Sm. 278; *re Davis's Trusts*, L. R., 12 Eq. 214).
- (E) A company which has been wound up and dissolved, having a bare legal estate then vested in it, has been

treated as sufficiently existing for an order to be made under this section for the appointment of a new trustee (*in re* No. 9 Bomore Road, 1906, 1 Ch 359; *Hastings Corporation v. Letton*, 1908, 1 K. B. 378).

The discretion which the Court exercises in appointing new trustees is not a mere arbitrary discretion, but is to be exercised in accordance with certain principles.

Among these principles are the following:—

First.—In selecting a person for the office the Court will have regard to the wishes of the author of the trust, expressed in, or plainly deduced from, the instrument creating it.

Secondly.—The Court will not appoint a person with a view to the interest of some of the *cestuis que trust* in opposition to the interest of others.

Thirdly.—The Court will have regard to the question whether the appointment will promote or impede the execution of the trust (*in re* Tempest, L. R., 1 Ch. 485).

The cases where the Court considers it expedient to appoint a new trustee are not absolutely definable, but, so far as the decided cases go, they may be grouped under the following heads:—

- (a) Where a trustee is an infant the Court will appoint another trustee in the infant's place, but without prejudice to any application by the infant on coming of age to be restored to the trusteeship (*re* Shelmerdine, 33 L. J., Ch. 474; see also *re* Porter's Trust, 2 Jur., N. S., 349; and *re* Gartside's Estate, 1 W. R. 196).
- (b) The Court has also considered it expedient where all the trustees have died in the testator's lifetime, and there are therefore no trustees, or where there was no representative of a last surviving trustee or difficulty exists in obtaining administration (*re* Smirthwaite's Trusts, L. R., 11 Eq. 251; *re* Moore, *McAlpine v. Moore*, 21 Ch. D. 778; *re* Williams's Trusts, 36 Ch. D. 231; *re* Matthews, 26 Beav. 463; *Davis v. Chanter*, 4 Jur., N. S., 272; *re* Davis's Trusts, L. R., 12 Eq. 214). The decision in *re* Moore, *McAlpine v. Moore*, must not be construed as laying down any rule that the Court can appoint executors, though the expressions in the judgment might lend some sanction to this view. Sub-section 3 of the section now under discussion negatives the existence of any such power expressly.

- (c) In cases where there is a doubt whether the power of appointment applies, the Court will appoint new trustees (*re Woodgate's Settlement*, 5 W. R. 448; *re Armstrong's Settlement*, *ibid.*).
- (d) Where a trustee is bankrupt the Court can, if it thinks fit, remove him, and appoint another in his place, whether he consents or not (see last Clause of Sub-section 1, and also *Coombes v. Brookes*, L. R., 12 Eq. 61; *re Adams's Trusts*, 12 Ch. D. 634; *re Barker's Trusts*, 1 Ch. D. 43; *re Foster*, 55 T. L. R., N. S., 479; *re Mace's Trusts*, 1887, W. N. 232; *re Dawson's Trusts*, 1899, W. N. 134; *re Betts*, 41 Sol. J. 209; and also Section 147 of The Bankruptcy Act, 1883).
- (e) Where a trustee is a lunatic, then, whether the trustee be so found or not, a new trustee may be appointed—
- (i.) Under an express power in the trust instrument, if there be such a power; or
 - (ii.) By the continuing trustees under Section 10 of this Act.

In either of these events a vesting declaration can be made of property to which a declaration is applicable (*in re Elizabeth Blake*, 1887, W. N. 173), or a vesting order can, if a vesting declaration is not applicable, be obtained in lunacy under Sections 135 to 139 of The Lunacy Act, 1890 (see *in re C. M. G.*, spinster, a person of unsound mind not so found, 1898, 2 Ch. 324). If no power is available, or there is no continuing trustee, the committee of the estate of the lunatic can appoint a new trustee under Section 128 of the Lunacy Act, or where the case falls within Section 135 *et seq.* the Judge in Lunacy may appoint a new trustee and make a vesting order, or the Master in Lunacy, exercising the jurisdiction conferred by Section 27, Sub-section 1, of The Lunacy Act, 1891, and Section 128 of the Act of 1890, can appoint a new trustee and make a vesting order under Section 129 of the latter Act.

There is also power in the Chancery Division, under the section now under discussion, to appoint a new trustee, but no vesting order can be made (*in re M.*, 1899, 1 Ch. 79). If a vesting order is needed resort should be had to the lunacy jurisdiction. In that event the application should be by summons unless the Judge or Master otherwise direct (Rules in Lunacy, 1892, W. N., 1892, Rules 19 and 15; and 1900, W. N. 229, whereby Rule 17 of the Rules in Lunacy, 1892, was repealed). As a vesting order made in lunacy as to land operates apparently on the estate and interest of the lunatic only (*re Pearson*, 5 Ch. D. 982; *re Chall*, 49 L. T. 196; *in re Vicat*, 33 Ch. D. 103; *in re Jones*, *ibid.*, 414), where the investment of the trust property includes mortgage securities there would

be a severance of the joint tenancy if the usual vesting order were made, and the order should therefore be in the form of that made in *in re Vicat* (33 Ch. D. 103), viz. that the continuing trustees be appointed to convey in the place of the lunatic the estate of the lunatic and of themselves to themselves and the new trustee (see Sub-section 4 of Section 135 of The Lunacy Act, 1890).

If a trustee is a lunatic and out of the jurisdiction the Chancery Division can be applied to, as in *re Gardner's Trusts* (10 Ch. D. 29), or an application could be made under The Lunacy Act, 1890, Sections 134 and 141. As The Lunacy Act, 1890, gives no jurisdiction to make a vesting order in the case of a trustee who is a criminal lunatic (see Sections 136 and 340) the old jurisdiction in such a case under Section 5 of The Trustee Act, 1850 is preserved by the proviso or saving clause in Section 342, notwithstanding that by that section Section 5 of the earlier Act is in terms repealed, there being nothing in the later Act inconsistent with the preservation of that jurisdiction; and the Court in Lunacy will exercise that jurisdiction accordingly by making a vesting order under the Act of 1850 (*in re R.*, 1906, 1 Ch. 730). This report contains a form of a vesting order of stock standing in the name of a criminal lunatic trustee.

Where it is not desired to appoint a new trustee the Court can, in lunacy, make a vesting order in the other trustees (*in re Leon*, 1892, 1 Ch. 348), but a Master cannot make the order (*in re Langdale*, 1901, 1 Ch. 3).

- (f) Where a trustee is convicted of felony (see last Clause of Sub-section 1). A trustee who is a felon can be removed either upon summons or petition, but it depends on the circumstances in each case whether or not the Court will exercise the jurisdiction (*re Dawson's Trusts* (1899, W. N. 134). In *re Fitzherbert's Settlement Trusts* (1898, W. N. 58, No. 8), one of three trustees being an absconding bankrupt and out of the jurisdiction, the Court, under Sections 26 and 35 of this Act, made an order vesting the trust estate in the other two trustees.
- (g) Where a trustee has absconded and cannot be discovered.
- (h) Where a trustee has gone to reside abroad permanently (*re Bignold's Settlement Trusts*, L. R., 7 Ch. 223).
- (i) Where incapacity has been caused by age or infirmity (*re Lemann's Trusts*, 22 Ch. D. 633, in which case a trustee had become incapable of acting by reason of old age and consequent bodily and mental infirmity). In *re Barber* (39 Ch. D. 187) a person who was a paralytic and deprived of the power of speech and unable to read and write, but not suffering from any

mental disease, was held to be removable by the Chancery Court (see also *re Phelps's Settlement Trusts*, 31 Ch. D. 351; commented on in *re Martin's Trusts*, 34 Ch. D. 618). In such a case service on the infirm trustee is dispensed with (*re Weston's Trusts*, 1898, W. N. 151, No. 10, following *re Green*, 1875, L. R., 10 Ch. 272), and the application is properly made in Chancery, in the absence of mental incapacity. But this jurisdiction cannot be resorted to where there is a controversy as to the facts, as in *re Blanchard* (3 De G. F. & J. 131).

Under the powers of this section the Court can appoint a new trustee or new trustees either—

- (a) In substitution for any existing trustee or trustees;
- (b) In addition to any existing trustee or trustees; or
- (c) Although there is no existing trustee.

For an example of an appointment where there were no original trustees see *re Davis's Trusts* (L. R., 12 Eq. 214), where a testatrix had given a settled legacy and not vested it in any trustees.

The Court will not necessarily limit itself to the original number of trustees, but, whatever the original number, it will not reduce it unless an administration action is pending, or the trust property is immediately divisible, or about to be paid into Court, or special circumstances exist. In *re Fowler's Trusts* (1886, W. N. 183), and in *re Price* (1894, W. N. 169), the property was vested in two in lieu of the original three trustees; *re Gardiner's Trusts* (33 Ch. D. 590); *Davies v. Hodgson* (32 Ch. D. 225); *re Lamb's Trusts* (28 Ch. D. 77); *re Stokes's Trusts* (L. R., 13 Eq. 333); *re Harford's Trusts* (13 Ch. D. 135); *re Tatham's Trusts* (1877, W. N. 259); *re Aston* (23 Ch. D. 217); *re Martyn* (26 Ch. D. 745); and *re Chetwynd's Settlement, Scarisbrook v. Nevinson* (1902, 1 Ch. 692), lays down the principle that in an action to administer a trust the Court has jurisdiction to discharge a trustee without appointing a new trustee in his place; but this cannot be done under Section 25, as it is not the practice to reappoint continuing trustees in the place of themselves and a retiring trustee.

If there were originally one trustee, one new one may be appointed (*re Reynault*, 16 Jur. 233, though in this case the trust was coming to an end). The Court has appointed two instead of one (*re Tunstall's Will*, 4 De G. & Sm. 421). If there were two old trustees, the Court, as stated above, will never appoint less than two new ones, and has sometimes added to that number, as in *re Boycott* (5 W. R. 15), where it appointed two in addition to the original two trustees.

In the case of a charity where there were ten trustees the Court, on appointing that number, directed that when they became reduced to three they should apply in Chambers for an appointment of others to fill up the number (*re Bergholt*, 2 Eq. Rep. 90).

As to the persons the Court appoints as trustees. The following persons are not eligible for appointment by the Court as trustees:—

- (A) *Persons resident out of the jurisdiction* (*re Guibert*, 16 Jur. 852; *Curtis's Trust*, Ir. R., 5 Eq. 422).—Under special circumstances, as where the bulk of the property is abroad, the Court will appoint such persons, and can, and does, allow remuneration out of the trust property for their services (*re Freeman's Settlement Trusts*, 37 Ch. D. 148). So, too, where all the *cestuis que trust* are resident out of the jurisdiction (*re Liddiard*, 14 Ch. D. 310). In this case the property was English personalty, but it was intended to sell it and invest in the country where the beneficiaries lived, some of them being infants (see also *in re Drewe*, 1876, W. N. 168). The case of *re Freeman's Settlement Trusts* is a particularly instructive case. There the *cestuis que trust*, some of whom were infants, were all resident out of the jurisdiction, either in Canada or the United States. It being necessary to appoint new trustees, the Court appointed two Canadians resident there and their English agent trustees, but required an undertaking by the trustees out of the jurisdiction, in case the power of appointing new trustees should become exerciseable by them, or either of them, not to appoint any new trustee resident out of the jurisdiction without the consent of the Court. The Court also, subject to the production of evidence as to the number of the holdings, the rents and dates of payment, the necessity of paying a commission for collecting the rents, and that the proposed remuneration was proper, sanctioned the payment of a commission to the English trustee. The property in this case was real estate (see also *re Simpson*, 1897, W. N. 105; 1897, 1 Ch. 256). The case of *Marshall v. Holloway* (2 Sw. 432, 453) was cited as authority for the proposition that the Court can authorise both prospective and retrospective allowances to a trustee for time, pains, and trouble in management.
- (B) *Aliens*.—The Court objects to appoint aliens, because they are, as a rule, out of the jurisdiction; but where the *cestuis que trust* were living abroad and English trustees could not be found the Court has appointed aliens (*re Hill's Trust*, 1874, W. N. 228). In that case the property was realty and personalty in England, the

cestui que trust being resident in France; two Frenchmen were accordingly appointed trustees. Where, by inadvertence, an alien was appointed, the Court has subsequently, upon a rehearing, discharged the order (*re Giraud*, 32 Beav. 385).

- (c) *Any of the cestuis que trust*, unless it cannot be avoided (*ex parte Clutton*, 17 Jur. 988; *re Clissold*, 10 L. J., N. S., 642; *ex parte Conybeare's Settlement*, 1 W. R. 458). In *re Burgess's Trusts* (1877, W. N. 87), where it was found impossible to induce anyone, not a *cestui que trust*, to become a trustee, an undertaking had to be given by the persons appointed trustees that whenever either became a sole trustee he should immediately take steps to appoint another co-trustee (following *re Hattatt's Trusts*, 1870, W. N. 14; see also *re Davis's Trusts*, L. R., 12 Eq. 214, at p. 217). The husband of a *cestui que trust* can be appointed, especially if he be one of three trustees (*re Hattatt's Trusts*, 1870, W. N. 14; *re Burgess's Trusts*, 1877, W. N. 87), a similar undertaking being exacted as in the case of a *cestui que trust* being appointed a trustee. In one case a member of the firm of solicitors acting for the petitioners has been appointed (*re Brentwall's Trust*, 1872, W. N. 77), but as a rule the solicitor acting for a party will not be appointed (*re Orde*, 24 Ch. D. 271, at p. 272). For the principles applicable in the case of trustees for the Settled Land Acts see *in re Hammond Spencer's Settled Estates* (1903, 1 Ch. 75), and cases there cited. In this connection it should be noted that where under Section 10 of this Act a person has a power of appointment, as that power is to appoint "another person or other persons," he cannot appoint himself (*in re Sampson, Sampson v. Sampson*, 1906, 1 Ch. 435). But where a power of appointment was "to appoint a new trustee or trustees," under such a power the appointor might appoint himself, but this should only be done in special circumstances (*Montefiore v. Guedalla*, 1903, 2 Ch. 723).
- (d) *Trust corporations*.—The Court has refused to appoint a trust corporation a trustee, but has appointed certain individuals nominated by it (*re Brogden, Billing v. Brogden*, 1888, W. N. 238; and see *Law Guarantee Society v. Bank of England*, 24 Q. B. D. 406). But the Court can now, under The Judicial Trustees Act, 1896, appoint a judicial trustee to be trustee, either jointly with any other person or as sole trustee (see the notes to that Act, and the rules under it, *post*); and since The

Bodies Corporate (Joint Tenancy) Act, 1899, a body corporate may be appointed jointly with an individual (see *in re Thompson's Settlement Trusts*, *Thompson v. Alexander*, 1905, 1 Ch. 229). In the last-mentioned case a marriage settlement contained a proviso that if the trustees thereby constituted, or either of them, or any trustees or trustee thereby appointed should die . . . it should be lawful for the husband and wife to appoint a new trustee. One of the trustees having died, the husband and wife proposed to appoint a corporation to be new trustee jointly with the surviving trustee. And the Public Trustee (who is a corporation sole under that name, with perpetual succession) can now be appointed by the Court to be a trustee of any will or settlement or other instrument creating a trust either as an original or as a new trustee, or as an additional trustee, as if he were a private trustee with this addition, that though the trustees originally appointed were two or more, the Public Trustee may be appointed sole trustee (see Section 5 of The Public Trustee Act, 1906, *post*).

According to the present practice the appointment by the Court of a properly qualified unmarried woman to be a trustee is not limited to cases in which no other trustee can be found (*re Dickinson's Trusts*, 1902, W. N. 104; see also *re Berkley*, *Berkley v. Berkley*, 9 Ch. D. 720). This reverses the practice acted on in *Brook v. Brook* (1 Beav. 531), but which had not been followed in *re Campbell's Trusts* (31 Beav. 176), where a *feme sole* was appointed.

Generally, the Court can appoint separate sets of trustees for distinct trusts under this Act (*Cotterill's Trusts*, 1869, W. N. 183; *Cunard's Trusts*, 27 W. R. 52; *Moss's Trusts*, 37 Ch. D. 513; and see the notes to Section 10, Sub-section 2 (*b*), of this Act, p. 88, *ante*).

An affidavit of fitness of the trustees is always required by the Court, and should show something as to the position of the proposed trustees in respect of their pecuniary means (*re Castle*, *Sterry's Trusts*, 1888, W. N. 179). The description of deponent of such an affidavit as a "gentleman" is insufficient, and the costs of such an affidavit will be disallowed (*re Horwood*, 1886, W. N. 139; *re Orde*, 24 Ch. D. 271; but see *re Dodsworth*, *Spence v. Dodsworth*, 1891, 1 Ch. 657, where an affidavit containing such a description of a trustee was allowed to be filed). Chitty, J., remarked in that case that *re Horwood* (55 L. T., N. S., 373) and *re Orde* only held the description "gentleman" insufficient for the particular purpose of weighing the value of the deponent's evidence, and of weighing the value of evidence of fitness of a proposed trustee. A statement that trustees were of "good credit" is a sufficient statement of

pecuniary means (*re* Smith's Policy Trusts, 1894, W. N. 68). One affidavit only is required (*re* Arden, 1887, W. N. 166).

The consent of a new trustee to act is now to be evidenced by a written consent to be signed by him, and verified by the signature of his solicitor (R. S. C. 1883, Order XXXVIII, Rule 19 [a]). This rule did not apply to lunacy proceedings (*re* Wilson, 31 Ch. D. 522); but it did apply to proceedings entitled "In the Chancery Division," as well as "In Lunacy" (*re* Hume, 35 Ch. D. 457). The Rules in Lunacy, 1892, Rule 92, have, however, now assimilated the practice, and the consent of a new trustee to act is sufficiently evidenced by a written consent signed by him and verified by a solicitor.

The application for the appointment of new trustees is made by summons in Chambers under R. S. C. (Trustee Act), 1895, Rule 5 (R. S. C. 1893, Order LV., Rule 13 [a]).

As altered by the Rules of the Supreme Court, February, 1895 (which added the words in brackets below), this Rule is as follows:—

Any of the following applications under The Trustee Act, 1893, may be made by summons:—

- (A) Any application for the appointment of a new trustee, with or without a vesting or other consequential order.
- (B) An application for a vesting order, or other order consequential on the appointment of a new trustee, whether the appointment is made by the Court, or by a Judge, or out of Court.
- (C) An application for a vesting or other consequential order in any case where a judgment or order has been given or made for the sale, conveyance, or transfer of any land or stock [or the suing for or recovering any chose in action].
- (D) An application relating to a fund paid into Court in any case [coming within the provisions of Rule 2 of this Order].

Order LV., Rule 15 (a), should be read in connection with these Rules:—

No order appointing a new trustee and no vesting or other order consequential on the appointment of new trustees shall be made except by the Judge in person.

The case of *re* Peach (33 Sol. J. 575), where it was held that a petition was necessary when the trustees have been appointed out of Court, is rendered obsolete by these Rules.

Application under these Rules will be by originating summons, unless there is pending an action or proceeding in which a summons can be taken out.

For Forms see Appendix II., *post*, Forms Nos. 9, 10, and 11.

As to (A)—The right to go by petition is not taken away, but should only be resorted to in cases of difficulty or intricacy not easily dealt with otherwise (*re Morris*, 37 W. R. 317; *re Broadwood*, 55 L. J., Ch. D. 666; and see also *re Atkinson's Policy Trusts*, 13 R. 285).

As to (B)—The vesting or other order referred to in this Rule must be one “consequential on” the appointment of a new trustee or trustees.

As to (C)—This part of the Rule is referable to Section 30 of The Trustee Act, 1893, and Section 1 of The Trustee Act, 1893, Amendment Act, 1894.

Land or stock can be vested.

The form in which a vesting order on the appointment of new trustees should be made has given rise to considerable discussion, but seems finally decided by the cases of *in re New Zealand Trust and Loan Co.* (1893, 1 Ch. 403), and *in re Gregson's Trusts* (1893, 3 Ch. 233).

From the judgment in the latter case it would appear that where the shares to be transferred to the new trustees are fully paid up the form should be as follows (following the form in *re Peacock*, 14 Ch. D. 212):—“It is ordered that the right to call for a transfer and to transfer into their own names or otherwise to a purchaser or purchasers the following stocks or shares, and to execute all such deeds and instruments as may be necessary for the purpose, do vest in the said H. and B.: that is to say, &c. . . . and it is ordered that the right to receive the dividends due (if any) and to accrue due on all or any or either of the before-mentioned stocks and shares do vest in the said H. and B.” (see *in re New Zealand Trust and Loan Co.*, 1893, 1 Ch. 403, note on page 405, as explained in *re Gregson's Trusts*, *ante*).

If there be any liability on the shares, as the trustees cannot presumably intend to become shareholders and so expose themselves to liability, the proper form will be to direct that “the right to call for a transfer of and to transfer the sum of [] and to receive any dividends due and to accrue due thereon do vest,” &c.

The case of *in re Tweedy* (28 Ch. D. 529) gives the recitals which it is proper to insert in an order appointing new trustees.

Parties.—The applicant in a summons or petition (where necessary) for the appointment of new trustees may be any beneficiary or duly appointed trustee (Section 36, *post*).

The respondents should be, as a general rule, all the beneficiaries who are not applicants. The new trustees need not be made parties, but any retiring trustee should be (*re Sloper*, 18 Beav. 595). The practice has been carefully described in a memorandum on the practice by Kekewich, J. (in 1900, W. N. 85), where after the adjourned hearing of a case, in which some discussion had taken place as to the necessity of bringing all the beneficiaries before the Court as parties on an application for the appointment of new trustees under The Trustee Act, 1893, his Lordship said that, in view of the discussion which had taken place, and finding that some misconception as to the state of the practice existed, he had had an interview with the Senior Registrar, and had asked him to look into the subject and see what the practice was. His Lordship did this both because an erroneous view seemed to prevail to the effect that there was in these cases a stringent rule of practice requiring the presence of all the beneficiaries unless expressly dispensed with, and also because the practice in such matters was settled in Chambers, and only those who came before the Judge in Chambers were cognisant of it. The Senior Registrar had furnished the following memorandum:—

“When The Trustee Act, 1850 (13 & 14 Vict. c. 60), first came into operation the practice was adopted of requiring *all the parties beneficially interested* to appear upon or be served with a petition for the appointment of new trustees. This was soon found to be both expensive and inconvenient, and the practice has for many years been modified by dispensing with service on parties who are remotely interested, or whose interests are small; but in such cases the Registrars have required the point to be mentioned to the Court, and no general rule has been laid down either under the Act of 1850 or the Act of 1893.

“I have searched the various Law Reports for many years back, and the only cases I can find reported upon the subject are the following:—Service on a trustee of unsound mind (not so found) was dispensed with in *re Green* (L. R., 10 Ch. 272); service on an absconding trustee was dispensed with in *Hyde v. Benbow* (1884, W. N. 117); service on a *cestui que trust* in Australia was dispensed with in *re Wilson* (31 Ch. D. 522). In *re Blanchard* (3 De G. F. & J. 131, 137), Turner, L. J., after observing that the Act of 1850 does not in terms require all persons interested to be served, says: ‘And it has not been unusual to dispense with service on all parties.’”

Upon that his Lordship did not understand the meaning to be that there must be an express order dispensing with service on certain beneficiaries, but only that the Court would proceed

in their absence. He had himself frequently made orders for the appointment of new trustees without requiring the attendance of or service on a person of *unsound mind*, an *absconding debtor*, or a *person out of the jurisdiction*, provided that the interests of such persons were fairly represented. In truth, the practice might shortly be stated to be that the Judge exercised his discretion according to the circumstances of each case as it came before him, taking care to ascertain *who were the parties* and *what were their interests*, and, being satisfied, as far as could be on non-contentious applications, that there was a fair hearing of all possible contentions as to the persons to be appointed trustees and otherwise. It was a discretionary jurisdiction which required great care, and was attended with some difficulty.

Service.—Service on a respondent living abroad may be dispensed with (*re Wilson, ante*).

As to (D).—The practice as to funds which have been paid into Court under the Trustee Act is dealt with in the notes to Section 42, *post*.

Sub-section 2.—The effect of this sub-section is simply that the trustees who cease to be trustees when new ones are appointed by the Court are not liable for anything taking place *after* their retirement.

Sub-section 3.—An executor can only be appointed by a testator himself. An administrator may be appointed by the Court of Probate (see *re Willey*, 1890, W. N. 1). The case of *in re Moore, McAlpine v. Moore* (21 Ch. D. 778), where Kay, J., is reported to have appointed a trustee or trustees “to perform the duties incident to the office of an executor,” is commented on in *Eaton v. Daines* (1894, W. N. 32), where Kekewich, J., points out that the judgment of Kay, J., in the former case had been misapprehended, and that he must be taken to have meant no more than that the definition in Section 2 of The Trustee Act, 1850, enabled him to make the order in the particular case before him, when there was no existing trustee, and that that judgment must be read with the qualification suggested by Cotton, J., in *re Willey (ubi supra)* to the effect that the Act (and therefore this Act) did not authorise the appointment of a trustee to discharge duties which belonged not to the office of a trustee, but only to that of an executor. Where a trustee is a lunatic, then, unless he is an infant or is out of the jurisdiction, the application (see *re Gardner's Trusts*, 10 Ch. D. 29) will have to be made in Lunacy alone under The Lunacy Acts, 1890 and 1901, and the Rules thereunder. These Rules came into force on the 1st March, 1892 (printed in *Weekly Notes* of the 19th March, 1892),

and were amended by the Rules of the 15th June, 1893, which came into operation in July, 1893, and are printed in *Weekly Notes* of the 24th June, 1893.

The following are the sections in The Lunacy Act, 1890 (53 & 54 Vict. c. 5), dealing with lunatic trustees:—

VESTING ORDERS.

135. (1) When a lunatic is solely or jointly seised or possessed of any land upon trust or by way of mortgage, the Judge in Lunacy may by order vest such land in such person or persons, for such estate, and in such manner as he directs.

(2) When a lunatic is solely or jointly entitled to a contingent right in any land upon trust or by way of mortgage, the Judge may by order release such hereditaments from the contingent right, and dispose of the same to such person or persons as the Judge directs.

(3) An order under Sub-sections (1) and (2) shall have the same effect as if the lunatic had been sane, and, if solely seised, possessed, or entitled as aforesaid, had executed, or, if jointly seised, possessed, or entitled as aforesaid with any other person or persons, he and such other person or persons had executed a deed for conveying the land for the estate named in the order, or releasing or disposing of the contingent right.¹

(4) In all cases where an order can be made under this section the Judge may, if it is more convenient, appoint a person to convey the land or release the contingent right, and a conveyance or release by such person in conformity with the order shall have the same effect as an order under Sub-sections (1) and (2).

(5) Where an order under this section vesting any copyhold land in any person or persons is made with the consent of the lord or lady of the manor, such land shall vest accordingly without surrender or admittance.

(6) Where an order is made appointing any person or persons to convey any copyhold land, such person or persons shall execute and do all assurances and things for completing

¹ The sub-section as given above is by Section 2 of The Lunacy Act, 1908 (8 Edw. VII. c. 47), substituted for Sub-section (3) of The Lunacy Act, 1890. The original sub-section was in the following terms:—

(3) *An order under Sub-sections (1) and (2) shall have the same effect as if the trustee or mortgagee had been sane, and had executed a deed conveying the lands for the estate named in the order, or releasing or disposing of the contingent right.*

the assurance of the lands, and the lord and lady of the manor shall, subject to the customs of the manor and the usual payments, be bound to make admittance to the land, and to do all other acts for completing the assurance thereof, as if the persons in whose place an appointment is made were free from disability, and had executed and done such assurances and things.

136. (1) Where a lunatic is solely entitled to any stock or chose in action upon trust or by way of mortgage, the Judge in Lunacy may by order vest in any person or persons the right to transfer or call for a transfer of the stock, or to receive the dividends thereof, or to sue for the chose in action.

This does not apply to a criminal lunatic, in which case Section 5 of The Trustee Act, 1850, applies still (*in re R.*, 1906, 1 Ch., see p. 739).

(2) In the case of any person or persons jointly entitled with a lunatic to any stock or chose in action upon trust or by way of mortgage, the Judge may make an order vesting the right to transfer or call for a transfer of the stock, or to receive the dividends thereof, or to sue for the chose in action either in such person or persons alone or jointly with any other person or persons.

(3) When any stock is standing in the name of a deceased person whose personal representative is a lunatic, or when a chose in action is vested in a lunatic as the personal representative of a deceased person, the Judge may make an order vesting the right to transfer or call for a transfer of the stock, or to receive the dividends thereof, or to sue for the chose in action in any person or persons he may appoint.

(4) In all cases where an order can be made under this section the Judge may, if it is more convenient, appoint some more proper person to make or join in making the transfer.

See in re C. M. G., spinster, a person of unsound mind not so found (1898, 2 Ch. 324). This case shows that the section applies to persons of unsound mind not so found.

A Master in Lunacy has not the jurisdiction under this section to make a vesting order as to trust property which, a new trustee having been already appointed, remains vested in the old trustees, one of whom is a lunatic (*re Langdale (a lunatic)*, 1901, 1 Ch. 3, distinguishing *re Fuller*, 1900, 2 Ch. 551).

(5) The person or persons in whom the right to transfer or call for a transfer of any stock is vested may execute and do all powers of attorney, assurances, and things to complete the transfer to himself or themselves or any other person or persons according to order, and the bank and all other companies and their officers, and all other persons shall be bound to obey every order under this section according to its terms.

(6) After notice in writing of an order under this section, it shall not be lawful for the bank or any other company to transfer any stock to which the order relates, or to pay any dividends thereon except in accordance with the order.

137. Where a person is appointed to make or join in making a transfer of stock, such person shall be some proper officer of the bank, or the company, or society, whose stock is to be transferred.

As to the form in which orders are made see in re C. M. G., ante.

138. The powers conferred by this Act as to vesting orders may be exercised for vesting any land, stock, or chose in action in the trustee or trustees of any charity or society over which the High Court has jurisdiction, upon suit duly instituted, whether the appointment of such trustee or trustees was made by instrument under a power or by the High Court under its general or statutory jurisdiction.

139. The Judge in Lunacy may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Act is to be exercised.

140. The fact that an order for conveying any land or releasing any contingent right has been founded upon an allegation of the personal incapacity of a trustee or mortgagee shall be conclusive evidence of the fact alleged in any Court upon any question as to the validity of the order, but this section shall not prevent a Judge of the High Court from directing a reconveyance of any lands or contingent right dealt with by the order, or from directing any party to any proceeding concerning such land, or right to pay any costs occasioned by the order when the same appears to have been improperly obtained.

[*This section has been repealed by Section 51 of The Trustee Act, 1893, but it is virtually re-enacted by Section 40 of that Act.*]

141. In every case in which the Judge in Lunacy has jurisdiction to order a conveyance or transfer of land or stock, or to make a vesting order, he may also make an order appointing a new trustee or new trustees.

142. The Judge in Lunacy may order the costs of or incident to obtaining an order under the provisions of this Act as to vesting orders, and carrying the same into effect, to be paid out of the land or personal estate, or the income thereof, in respect of which the order is made, or in such manner as the Judge may think fit.

143. The provisions of this Act as to vesting orders shall not affect the jurisdiction of the High Court as to any lunatic trustee or mortgagee who is an infant.

The following are the Rules in Lunacy under the above sections of the Act of 1890:—

THE RULES IN LUNACY, 1892.

Dated 6th February, 1892.

VESTING ORDERS.

Applications under that portion of The Lunacy Act, 1890, which relates to “ Vesting Orders ” may be made—

- (a) Where the application is for the appointment of new trustees, or relates to property subject to a trust by any person beneficially interested in the property, whether under disability or not, or by any duly appointed trustee thereof.
- (b) Where the application relates to any property subject to a mortgage by any person beneficially interested in the equity of redemption, or in the mortgage money, whether under disability or not.

The application shall be intituled in the matter of the trust or mortgage, and of the particular lunacy, and in the matter of The Lunacy Act, 1890.

The applicant shall serve any such application upon the person or persons who, according to the practice of the Chancery Division of the High Court, would be required or entitled to be served in similar cases.

APPLICATION FOR VESTING ORDER.

IN LUNACY.

In the Matter of the Trusts of an Indenture dated the
and made between

and

In the Matter of A. B., a person of unsound mind [*or, not so
found, as the case may be*],

and

In the Matter of The Lunacy Acts, 1890 and 1891.

The application must be by summons, unless the Judge in Lunacy or a Master directs a petition to be presented (see Rule in Lunacy dated the 29th of October, 1900, which is substituted for Rule 17 of the Rules in Lunacy, 1892, thereby annulled).

26. In any of the following cases : namely— Vesting orders as to land.

(i.) Where the High Court appoints or has appointed a new trustee ; and

(ii.) Where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person—

(A) is an infant, or

(B) is out of the jurisdiction of the High Court, or

(C) cannot be found ; and

(iii.) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land ; and

(iv.) Where, as to the last trustee known to have been entitled to or possessed of any land, it is uncertain whether he is living or dead ; and

- (v.) Where there is no heir or personal representative to a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead; and
- (vi.) Where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or a release of the right, to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for twenty-eight days after the date of the requirement;

the High Court may make an order (in this Act called a vesting order) vesting the land in any such person in any such manner and for any such estate as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct.

Provided that—

- (a) Where the order is consequential on the appointment of a new trustee the land shall be vested for such estate as the Court may direct in the persons who on the appointment are the trustees; and

- (b) Where the order relates to a trustee entitled jointly with another person, and such trustee is out of the jurisdiction of the High Court or cannot be found, the land or right shall be vested in such other person, either alone or with some other person.

Section 26.—This section is confined to cases of trusteeship, and does not apply to the case of an infant mortgagee, as did Section 7 of The Trustee Act, 1850. Such a case is, however, met by Section 28, *post*. The Definition Section (Section 50) clearly excludes a mortgagee. In these instances, and subject to the provisions above mentioned, the Court can, on the appointment of new trustees, vest the land or release the contingent right thereto.

This section, along with Sections 28 and 32, replaces Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, and 34 of The Trustee Act, 1850, so far as they affect trustees, and Section 2 of The Trustee Extension Act, 1852.

Sub-section (i).—Under the former Acts, and it is apprehended under this Act, the Court can, and will, make a vesting order when appointing a new trustee, even though there is no incapacity in the person possessed of the legal estate to convey it to the new trustee (*re Manning's Trust*, Kay, App. xxviii.), and if the new trustees are appointed in a suit a vesting order may be made subsequently (*re Hughes's Settlement*, 2 Hem. & M. 695).

In the case of a lunatic trustee not so found resort must be had to the lunacy jurisdiction if a vesting order is required (*re M.*, 1899, 1 Ch. 79; and *re Langdale*, 1901, 1 Ch. 3).

Where the evidence required on the appointment of a new trustee is not produced on the making of the vesting order, the latter will be post-dated (*re Havelock's Trust*, 11 Jur., N. S., 906).

It is clear that this section includes the case of leaseholds, which are within the definition of "land" (see Section 50), and the substitution of the words "entitled to or possessed of" in this section for the words "seised or possessed of," which were used in the similar section of The Trustee Act, 1850, supports this view. Indeed, it has been held that Section 34 of that Statute, which is replaced by this section, applied to leaseholds. The assent of the landlord to the vesting order is not needed unless there is a restriction against alienation (see *re Matthew's Settlement*, 2 W. R. 85; *re Driver's Settlement*, L. R., 19 Eq. 352; *re Dalglish's Settlement*, 4 Ch. D. 143; and *re Rathbone*, 2 Ch. D. 483, which overrules

re Dalgleish's Settlement, 1 Ch. D. 46). An order can be made even where the land has escheated, if the Crown assents to the vesting order (*re Martinez's Trusts*, 1870, W. N. 70).

Sub-section (ii).—Under this sub-section the Court can make a vesting order where the trustee is seised, possessed, or entitled to any land or a contingent right therein—

either (1) Solely ;

or (2) Jointly with any other person.

1. "*Solely*" seised.

A coparcener who has no beneficial interest and holds in trust for the other coparcener is solely seised (*McMurray v. Spicer*, L. R., 5 Eq. 527); but in *in re Greenwood's Trusts* (27 Ch. D. 359) it was held that the words "seised jointly" in Section 10 of The Trustee Act, 1850 (which is replaced by the section now under consideration), are not strictly limited to a legal joint tenancy, but are used in the widest sense, and include a case of land vested in coparceners, one of whom is out of the jurisdiction (*re Greenwood's Trusts*, 27 Ch. D. 359). Where trustees of realty have disclaimed the heir is a trustee within the Act, and so too, where the trustees have all died in the testator's lifetime (*Wilks v. Groom*, 6 De G. M. & G. 205; *re Gill*, *Seton on Decrees*, 6th ed., Vol. II., p. 1255).

Where a vendor died after a contract to sell had been entered into, but before conveyance, the sale having, in equity, converted the property *into personalty*, the heir was a trustee within the corresponding sections of The Trustee Acts, 1850 and 1852 (*re Badcock*, 2 W. R. 386). In the case of a sale of realty which has not been converted, the infant heir is not a trustee until a decree of a Court has been made to that effect, or unless the purchase-money has been paid to the vendor in his lifetime (*re Cumming*, L. R., 5 Ch. 72; and see note to Section 50). Whether there need be a decree or not depends on whether the contract is executed or unexecuted. Giffard, J., in *re Cumming*, says, "Where there is only a contract for sale a suit is necessary to declare the vendor a trustee; but where the contract has been executed by payment of the purchase-money and a formal covenant to surrender, I think that no suit is necessary."

This section applies to a mortgagor who has covenanted to surrender (*re Crowe's Mortgage*, L. R., 13 Eq. 26; *re Mill's Trusts*, 37 Ch. D. 312; and *re D. Jones & Co.'s Mortgage Trusts*, 1888, W. N. 217). The heir of a mortgagee who has been admitted is also a trustee within the section (*re Franklyn's Mortgages*, 1888, W. N. 217), but if not admitted the right to admission would apparently vest in his personal representative,

and subject thereto the rights vest in the devisee or customary heir of the mortgagor.

The principles laid down in these cases would now apply only in the case of copyholds, as Section 30 of The Conveyancing Act, 1881, makes trust estates vest in the personal representative of the last trustee.

Where a person beneficially entitled to land enters into a binding contract of sale Section 4 of The Conveyancing and Law of Property Act, 1881, operates. It applies where there is a contract enforceable against the heir or devisee.

The Land Transfer Act, 1897, Sections 1 and 2, also have a bearing on this point.

2. "Jointly" seised.

Joint mortgagees are not within this section as trustees (*re Walker's Mortgage Trusts*, 3 Ch. D. 209; and see Section 50).

But the co-heirs of a mortgagee are trustees within the Act; and if one be in the jurisdiction and one out, the latter is a trustee for the persons entitled to the mortgage moneys (*re Templer's Trust*, 4 N. R. 294: see also *re Hughes's Settlement*, 2 Hem. & M. 695).

(A) Where the Trustee is an Infant.

In the absence of any definition in this Act (Section 50) excluding an infant of unsound mind from the term "an infant," it seems that the case of a trustee who is an infant and of unsound mind falls under the jurisdiction herein given to the Court of Chancery. This appears to be clear from the terms of Section 143 of The Lunacy Act, 1890, which enacts that "the provisions of this Act as to vesting orders shall not affect the jurisdiction of the High Court as to any lunatic trustee or mortgagee who is an infant." The sections of The Lunacy Act, 1890, dealing with vesting orders are Sections 135 to 143, and are set out, together with the Rules relating thereto, on p. 165 *et seq.*, *ante*. They appear not to contemplate the case of an infant trustee who is lunatic, which affords an additional argument in support of the view above stated.

In *Powell v. Matthews* (1 Jur., N. S., 973) it was held that a vesting order under the similar section will, if consented to by the protector of the settlement, bar all estates in the remainder, and not pass a base fee only under The Fines and Recoveries Abolition Act, 1834.

(B) Where the Trustee is Out of the Jurisdiction of the High Court.

Mere temporary absence is not sufficient to enable the Court to act: as where the captain of a merchant vessel was away on a voyage (*Hutchinson v. Stephens*, 5 Sim. 499). Even where

a trustee has appeared by counsel he may be treated as out of the jurisdiction (*Stillwell v. Ashley*, not reported, *Seton on Decrees*, 6th ed., Vol. II., p. 1247). Service of a petition for vesting an outstanding legal estate was dispensed with in the case of the heirs of a trustee who had been out of the jurisdiction of the Court (*re Stanley's Trusts*, 1893, W. N. 30).

If the trustee out of the jurisdiction is of unsound mind, this section applies, and the application need only be made in Chancery and not in Lunacy (*re Gardner's Trusts*, 10 Ch. D. 29; *contra*, if he is in the jurisdiction of the Court). See *ante*, pp. 155, 156, as to powers of Court in cases of lunacy.

As to service not being necessary in the case of a trustee of unsound mind see *re East* (L. R., 8 Ch. 735) and *re Green* (L. R., 10 Ch. 272).

For a case where a trustee being an absconding bankrupt and out of the jurisdiction, the Court under this section made an order vesting the trust estate in the other two trustees (*in re Fitzherbert's Settlement Trusts*, 1898, W. N. 58, No. 8).

(c) *Where the Trustee cannot be found.*

A mortgagor who has deposited deeds by way of equitable mortgage, against whom a decree of foreclosure had been made, and who could not be found, is a trustee within this section (*Lechmere v. Clamp*, 30 Beav. 218; 31 Beav. 578). Another instance will be found in *re Walker's Mortgage Trust* (3 Ch. D. 209). In *Dugmore v. Suffield* (1896, W. N. 50) one of four trustees of a settlement having absconded was adjudicated a bankrupt, and could not be found. It was held that the Court could, under Sections 26 and 35 of this Act, make a vesting order. In *re Lees' Settlement Trusts* (1896, 2 Ch. 508), where one of four trustees was an absconding bankrupt, the Court made an order vesting the trust estate in the other three trustees, although the number of trustees was thereby diminished.

Before it can be said that a trustee cannot be found it must, it seems, be shown that there is a trustee (*in re Taylor's Agreement Trusts*, 1904, 2 Ch. 737; *in re Ruddington Land*, 1909, 1 Ch. 701, 707).

But where it is clearly expedient that a new trustee should be appointed the Court has power under the preceding section of this Act to appoint a new trustee, and a vesting order can thereupon be made under this section (see *in re 9 Bomore Road*, 1906, 1 Ch. 359; and *in re Ruddington Land*, 1909, 1 Ch. 701).

In the case of *in re 9 Bomore Road* the facts were: By an assignment of September, 1890, leaseholds became vested in a limited company for the residue of a term of ninety-nine years. In 1896 this company went into voluntary liquidation, and its assets were transferred to a new company. The purchase-money was paid, and the new company was let into possession, but by inadvertence no assignment of the leaseholds was executed. The old company having

become automatically dissolved under Section 143 of The Companies Act, 1862, a petition was presented by the new company under this Act asking for the appointment of a named person, pursuant to Section 25, to be a trustee of the leaseholds in the place of the old company, and for a vesting order; and it was held that, as it was clearly expedient to appoint a new trustee, the Court was justified in making the order asked for by the petition.

And it seems that the principle on which that case was decided would be applicable to every case where there is a property vested in a purchaser in equity with a legal estate outstanding and it is not known where that legal estate is (see the judgment of Warrington, J., at p. 364).

The case of *in re* Ruddington Land (*ante*) was the case of a society registered under The Industrial and Provident Societies Act, 1893, by instrument of dissolution under Sections 58 and 61 of that Act. The property of such a society so devolved is subject to a trust for appropriation and division (after providing for the claims of creditors) in accordance either with the provisions of the trust instrument or with the award of the Chief Registrar; and in the case referred to, the dissolution having taken place before the society had handed over some of its property to the person nominated by the instrument of dissolution to realise its assets, the Court (the Crown not claiming the property as *bona vacantia*) appointed him a trustee in the place of the society, and made an order vesting the property in him on the trusts applicable thereto under the instrument.

The two cases last referred to give the form of prayer necessary in such an application.

The cases above cited are further commented on in *Hastings Corporation v. Letton and Another* (1908, 1 K. B. 378), which incidentally lays down that when a corporation possessed of a leasehold ceases to exist the reversion is accelerated.

Sub-section (iii).—There is no presumption as to the time when one of two persons died, if dying in the same accident, shipwreck, or battle (*Wing and Angrave*, 8 H. L. C. 183; see also *re Phéné's Trust*, L. R., 5 Ch. 139; and *re Corbishley's Trusts*, 14 Ch. D. 846).

Sub-section (iv).—A person shown not to have been heard of for seven years by those (if any) who, if he had been alive, would naturally have heard of him is presumed to be dead, unless the circumstances of the case are such as to account for his not being heard of without assuming his death; but there is no presumption as to the time when he died, and the burden of proving his death at any particular time is upon the person who asserts it (*re Phéné's Trust*, L. R., 5 Ch. 139).

Sub-section (v).—The Court can make a vesting order under this sub-section—

- (a) Where there is no heir or personal representative to a trustee; or
- (b) Where it is uncertain who is the heir or personal representative or devisee.

As pointed out above, the provision as to the heir or devisee only applies now to copyholds (see note to Section 29, below).

This sub-section replaces Sections 15 and 34 of The Trustee Act, 1850. and does away with the difficulty that it was only when new trustees were appointed under Section 34 that such an order could be made in relation to leaseholds. "Land" as defined in the present Act clearly covers the case of leaseholds for years, and the sub-section now under discussion goes further than Section 15 of the old Act, as it includes the case of a trustee having no personal representatives, which obviously includes personalty. The difficulty as to leaseholds was generally surmounted by appointing new trustees under Section 34, and then vesting the leaseholds. *Re Mundel's Trust* (8 W. R. 683) and *re Harvey* (*Seton on Decrees*, 4th ed., Vol. I., p. 520) are therefore no longer law, and the expedient usually resorted to, and sanctioned by *re Driver's Settlement* (L. R., 19 Eq. 352); *re Rathbone* (2 Ch. D. 483); *re Dalglish's Settlement* (4 Ch. D. 143); *re Mundel's Trust* (6 Jur., N. S., 880); *re Matthews's Settlement* (2 W. R. 85); and *re Robinson's Will* (9 Jur., N. S., 385), is not of further interest. A vesting order can be made vesting the property in a person absolutely entitled under this section (*re Godfrey's Trusts*, 23 Ch. D. 205). The Lords Justices in Lunacy will not make such an order (*re Currie*, 10 Ch. D. 93; *re Holland*, 16 Ch. D. 673).

For the form in which a vesting order is made in such cases as are covered by this section see *in re Pilling's Trusts* (26 Ch. D. 432); and *in re Williams's Trusts* (36 Ch. D. 231).

Sub-section (vi).—This sub-section is in lieu of Section 2 of The Trustee Extension Act, 1852.

The jurisdiction arises not only where there has been *wilful refusal*, but also where there has been *mere neglect* to convey the land or release the right for twenty-eight days after the date of the requirement. For decisions showing what is *wilful refusal* see *re Mill's Trusts* (40 Ch. D. 14) and *Knight v. Knight* (1866, W. N. 114). It is not "*wilful*" if the trustee on good grounds entertains a *bonâ fide* doubt of the title of the person calling for the conveyance.

A written demand will usually—but not necessarily—be made, either by the party entitled to have the conveyance or by his agent: as, for instance, his solicitor.

If a married woman refuse, a vesting order can be made (*Rowley v. Adams*, 14 Beav. 130).

Where a mortgagor of copyholds who had covenanted to surrender within a certain time had not done so, a vesting order was made by the Court (*re Crowe's Mortgage*, L. R., 13 Eq. 26).

The High Court may make an order vesting the land in any such person, in any such manner, and for any such estate as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct.

Under Section 35 of this Act (as to which see *in re Knox's Trusts*, 1895, 2 Ch. 483), vesting orders as to stock and choses in action can be made; while under Section 14 of The Judicature Act, 1884, the Court can, where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract, &c., nominate a person to do so.

In the case of *in re Kenny's Trusts* (1906, 1 Ir. R. 531), it was held that the jurisdiction of the Court under this section to make a vesting order embraces a case where the trustees in whom the property is to be vested have been already appointed.

And in the case of *in re Ruthven's Trusts* (1906, 1 Ir. 236), it was held that where a person has agreed for valuable consideration to convey real estate and he is bound by a decree *in personam* of a Scotch Court, he is a constructive trustee, and as such a trustee within the meaning of this section, and on his refusing to convey a vesting order may be made.

“*Land.*”—In Section 50 “land” is defined as including “manors and incorporeal as well as corporeal hereditaments, and any interest therein, and also an undivided share of land.”

“Incorporeal hereditaments” is a wide and somewhat indefinite term; but the following are certainly included within it:—Advowsons, tithes, commons, ways, watercourses, lights, offices, dignities, franchises, corodies, pensions, annuities, and rents (2 Bl. Com. 21). In *Hales's Analysis*, p. 48, the following enumeration is given:—“Rents, services, tithes, commons, and other profits *in alieno solo*; pensions, offices, franchises, liberties, villeins, dignities.”

Copyholds clearly come within the term “corporeal hereditaments” (see Section 34).

The Court can by the vesting order vest the land in new trustees, if such are appointed (see Proviso [a]), or if none are appointed, then in the sole continuing trustee, or in the continuing trustee and new trustee (see Proviso [b]). It was at one time doubted whether the Court could do this under the sections of the Act replaced by this section, but the cases of *Smith v. Smith* (3 Drew. 72) and *re Marquis of Bute's Will* (1 Johns. 15) have set this doubt at rest; and the express words in Proviso (b) of this part of the section render it quite clear that the Court has power to do such a thing, notwithstanding *re Watts's Settlement* (9 Ha. 106) and *re Plyer's Trust* (*ibid.* 220).

The Court has in some cases allowed the number of trustees to be reduced (*in re Price*, 1894, W. N. 169; *re Lees' Settlement Trusts*, 1896, 2 Ch. 508; and *re Fitzherbert's Settlement Trusts*, 1898, W. N. 588).

The Court can, in short, divest the whole estate from the continuing and incapacitated trustees, and vest it in the new body, whether composed of the old trustees or not, as joint tenants (*re Fisher's Will*, 1 W. R. 505, and *Smith v. Smith*, *ubi supra*). The Court cannot and will not give any directions as to the mode of administration of the trust: its duty is confined to putting the funds in proper hands, to be administered in accordance with the trust deed, will, or other document (*re Taylor*, 2 De G. F. & J. 125).

As to the power of the Charity Commissioners for England and Wales to make orders for the appointment or removal of trustees of any charity, or for or relating to the assurance, transfer, payment, or vesting of any real or personal estate belonging thereto, or entitling the Official Trustees of Charity Funds, or any other trustees, to call for a transfer of and to transfer any stock belonging to such estate, see *The Charitable Trusts Act, 1860* (23 & 24 Vict. c. 136), and *Tudor on Charitable Trusts*, 4th ed., p. 593 *et seq.*

Orders as to
contingent
rights of
unborn
persons.

27. Where any land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of the land on any trust, the High Court may make an order releasing the land from the contingent right, or may make an order vesting in any person the estate to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

Section 27.—This section replaces Section 16 of *The Trustee Act, 1850* (13 & 14 Vict. c. 60), and in *Wake v. Wake* (17 Jur. 545)—a decision under that section and equally applicable to the substituted enactment—the Court discharged the contingent rights of unborn children in favour of purchasers. In *Hargreaves v. Wright* (1 W. R. 408) the Court decreed, in a suit for specific performance, that on each purchaser in that case making payment into Court the estate comprised in his contract should be discharged from the contingent rights of unborn persons claiming under a settlement.

28. Where any person entitled to or possessed of land, or entitled to a contingent right in land, by way of security for money, is an infant, the High Court may make an order vesting or releasing or disposing of the land or right in like manner as in the case of an infant trustee.

Vesting order in place of conveyance by infant mortgagee.

Section 28.—This section deals with the case of an infant mortgagee, and enables the Court to act in the same manner as it can in the case of an infant trustee. It replaces Sections 7 and 8 of The Trustee Act, 1850, so far as those sections have not been dealt with by the preceding sections of this Act—*i.e.* it deals with cases of an infant mortgagee only (see notes to next section and see also Section 30 of The Conveyancing Act, 1881).

The words explanatory of the powers of the Court in dealing with the infant's interest are very comprehensive: the order may *vest, release, or dispose of* the land, contemplating, evidently, either an out-and-out appointment of new trustees or the continuance of one or more of the old trustees, together with one or more new ones in the trust. For instance, see *in re Franklyn's Mortgages* (1888, W. N. 217), following *Lord Braybroke v. Inskip* (8 Ves. 417).

As the Court is empowered to make "an order in like manner as in the case of an infant trustee," a reference to Section 26 of this Act, and the notes thereon, will show the scope of this.

In the former Act of 1850, Section 2 contained a definition of "person of unsound mind," which was defined to mean "any person, not an infant, who not having been found a lunatic shall be incapable from infirmity of mind to manage his own affairs." The present Act does not contain any similar definition, but, notwithstanding this, it would appear that, no qualifying words being used, an infant, even though of unsound mind, comes within the operation of the section, and, therefore, no resort to the lunacy jurisdiction need be had, but the ordinary jurisdiction in Chancery applies (*re Arrowsmith's Trusts*, 4 Jnr., N. S., 1123).

Under the old practice it was not necessary to serve the infant with the petition (*re Tweedy*, 9 W. R. 398; *re Willan*, *ibid.* 689); but in *re Jones's Mortgage* (22 W. R. 837)—a petition under the Trustee Act—Jessel, M. R., considered it was contrary to principle to take an estate out of a person without giving him notice. This practice should certainly be followed in applications under the present Act, and the infant should be served.

29. Where a mortgagee of land has died without having entered into the possession or into the receipt of the rents and profits thereof,

Vesting order in place of conveyance by heir or devisee of

heir &c., or
personal
represent-
ative of
mortgagee.

and the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that last-mentioned person consents to any order for the reconveyance of the land, then the High Court may make an order vesting the land in such person or persons in such manner and for such estate as the Court may direct in any of the following cases: namely—

- (a) Where an heir or personal representative or devisee of the mortgagee is out of the jurisdiction of the High Court and cannot be found; and
- (b) Where an heir or personal representative or devisee of the mortgagee on demand made by or on behalf of a person entitled to require a conveyance of the land has stated in writing that he will not convey the same, or does not convey the same for the space of twenty-eight days next after a proper deed for conveying the land has been tendered to him by or on behalf of the person so entitled; and
- (c) Where it is uncertain which of several devisees of the mortgagee was the survivor; and
- (d) Where it is uncertain as to the survivor of several devisees of the mortgagee or as to the heir or personal representative of the mortgagee whether he is living or dead; and

- (e) Where there is no heir or personal representative to a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his heir or personal representative or devisee.

Section 29.—This section replaces Section 19 of The Trustee Act, 1850, but it differs in some respects from the repealed section. For the words “*any person to whom any lands have been conveyed by way of mortgage*” in Section 19 of The Trustee Act, 1850, the words “*a mortgagee of land*” are substituted in this Act, relying no doubt on the definition in Section 50 of the expressions “*mortgage*” and “*mortgagee*” as including and relating to “*every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee.*”

But this variation will not affect the construction and scope of the enactment. A more important variation is the insertion in each of Sub-sections (a), (b), (d), and (e) of the words “*personal representative.*” This addition is introduced in view of Section 30 of The Conveyancing Act, 1881 (44 & 45 Vict. c. 41), whereby it was enacted that estates or interests of inheritance vested in any person solely on any trust, or by way of mortgage, should, notwithstanding any testamentary disposition, devolve to and become vested in his personal representative or representatives.

By Section 88 of The Copyhold Act, 1894 (57 & 58 Vict. c. 46), it is enacted that Section 30 of The Conveyancing Act, 1881, “*shall not apply to land of copyhold or customary tenure vested in the tenant on the Court rolls on trust or by way of mortgage.*” Hence copyholds vested in a sole mortgagee will still descend to his devisee or heir, as the case may be, and the aid of this section of The Trustee Act, 1893, may have to be invoked. The reference to the heir or devisee in Sub-sections (a), (b), (c), (d), and (e) of this section have reference probably solely to copyhold property (see *re Mill's Trusts*, 37 Ch. D. 312), and the same remark applies to Section 26 of this Act.

The conditions precedent to this section operating are—

1. Where a mortgagee of land has died without having entered into possession, and either—
2. The money due in respect of the mortgage has been paid to a person entitled to receive the same; or
3. The person entitled to receive that money consents to any order for the reconveyance of the land, and in the case of (b) the heir or personal representative

of devisee or mortgagee must have stated in writing that he will not convey the land, and a proper instrument for conveying the land must have been tendered in accordance with the terms of the section (see *Rowley v. Adams*, 14 Beav. 130).

Re Meyrick's Estate (9 Ha. 116) was decided on this footing, but overruled in *re Boden's Trust* (1 De G. M. & G. 57; 9 Ha. 820; see also *re Quinlan's Trust*, 9 Ir. Ch. Rep. 306; and *re Lea's Trust*, 6 W. R. 482), which shows that the section replaced was applicable to the case where the personal representative of the mortgagee was applying, the estate having gone to the heir at law of the mortgagee. The term "reconveyance" in the section would obviously seem to point to a reconveyance to the mortgagor, but the case cited indicates that this is not strictly read. The application of the section to such a case as this is of small importance since Section 30 of The Conveyancing Act, 1881, under which trust and mortgage estates devolve on the personal representative.

Under the former Act, if the mortgagee were illegitimate and died intestate, a vesting order could be made, the petition having been served on the Crown (*re Minchin's Estate*, 2 W. R. 179).

If the mortgagee has taken possession this section does not apply. But in *re Skitter's Mortgage Trusts* (4 W. R. 791) the Court did, under Section 9 of The Trustee Act, 1850 (replaced by Section 26 of this Act), make an order vesting in the executors of a deceased mortgagee in fee, who had died intestate as to trust estates, the legal estate outstanding in the heir at law out of the jurisdiction, though the mortgagee had before her death been in receipt of the rents. The Court did this on the ground that Section 9 authorised such a vesting order where any person "seised or possessed of any lands upon any trust" was out of the jurisdiction. Section 9 is replaced, as to this, by Sub-section ii. (B) of Section 26 of this Act (see note to that section, *ante*, p. 173).

Under this section a transfer of a mortgage could, no doubt, be effected, as the words are "the money due in respect of the mortgage has been paid to a person entitled to receive the same."

Sub-section (e).—A case of "uncertainty" under this section arose under the following circumstances:—A mortgagee of freehold land died, having made a will by which he appointed executors. The validity of the will was disputed by the testator's widow, and an action to establish the will had been commenced in the Probate Division, but had not yet been tried. The mortgage debt had been paid. It was held that it was "uncertain," within the meaning of this sub-section, who was the personal representative of the deceased mortgagee, and that consequently the Court had jurisdiction to make an order vesting the mortgaged land in the mortgagor (see *in re Cook's Mortgage*, 1895, 1 Ch. 700; 1895, W. N. 60).

30. Where any Court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of the land, or entitled to a contingent right therein [*as heir, or under the will of a deceased person for payment of whose debts the judgment was given or order made*], and is a party to the action or proceeding in which the judgment or order is given or made, or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of this Act; and the High Court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate as that Court thinks fit in the purchaser or mortgagee or in any other person.

Vesting order consequential on judgment for sale or mortgage of land.

Section 30.—This section is a re-enactment, with amendments, of Section 29 of 13 & 14 Vict. c. 60 and Section 1 of 15 & 16 Vict. c. 55.

The words within brackets and in italics in this section were repealed by Section 1 of The Trustee Act, 1893, Amendment Act, 1894.

This section operates whenever the Court makes an order "directing the sale or mortgage of any land," as in a partition action or administration action, or for enforcing a vendor's lien.

Section 29 of 13 & 14 Vict. c. 60 only applied where the sale was for the payment of debts. Section 1 of 15 & 16 Vict. c. 55 remedied this by enacting that where a sale had been directed "for any purpose whatever" the power comes into effect. Although these words are not to be found in the section under consideration the meaning obviously is that it operates in any case.

Hence the powers conferred by it can be used where the sale has been to provide costs, thus rendering *Weston v. Filer* (5 De G. & Sm. 608) obsolete (see *Wake v. Wake*, 17 Jur. 545; and see also *Hancox v. Spittle*, 3 Sm. & Giff. 478).

There are two other variations introduced in the present section. The section begins "*Where any Court*"; the sections replaced speak of "*any Court of Equity*"; while lower down in this same Section 30 the words are "*the High Court may.*" When used with reference to England or Ireland, "High Court," by

Section 13, Sub-section 3, of The Interpretation Act, 1889, means Her Majesty's High Court of Justice in England or Ireland as the case may be. The other variation is the insertion of the words "or mortgage" in the second line of the section, and "mortgagee" in the last. The repealed sections did not include the case where the Court ordered a mortgage. To this extent, then, the law is altered, though apparently it had been the practice to make such orders in cases of a mortgage being directed.

"Every person" has been held to include persons under no disability, and who could have validly executed a conveyance of the property which it is desired to vest (*Beckett v. Sutton*, 19 Ch. D. 646), which case also decides that Section 1 of The Trustee Extension Act, 1852, and by analogy of reasoning this section, applies to sales under The Partition Acts, 1868 and 1876. It also includes a lunatic not so found (*Herring v. Clarke*, L. R., 4 Ch. 167); see this case commented on in *in re M.* (1899, 1 Ch. 79).

In *Seton on Decrees*, 6th ed., Vol. II., p. 1261 *et seq.*, will be found forms of decrees under this and the following sections of the Act.

The persons who may be declared trustees under this section are—

1. Any person seised or possessed of or entitled to the land.
2. Any person entitled to a contingent right therein.

Provided that such person is—

- (i.) A party to the action or proceeding; or
- (ii.) Is otherwise bound by the judgment or order.

The Court may vest the estate in the purchaser or mortgagee or in such other person as the Court thinks fit. *Hancox v. Spittle* (3 Sm. & Giff. 478) was a case of vesting the land in "some other person."

Where the estate is sold in lots the purchasers can petition for a vesting order, and the costs of each purchaser are payable out of the purchase-money of his lot (*Ayles v. Cox, ex parte John Attwood*, 17 Beav. 584).

"A party to the action or proceeding . . . or is otherwise bound by the judgment or order."—Persons interested in an estate the subject of an administration action to which they have not been made parties, and whose rights or interests may be affected by an order directing accounts and inquiries, are not bound by the proceedings under that order, at any rate where they ought to be served, unless they are served with notice of the order, or an order has been made appointing a member of their class to represent them in the action (*May v. Newton*, 34 Ch. D. 347; see also *Jones v. Burnett*, 1900, 1 Ch. 370).

Formerly, applications under the Trustee Act had to be by petition; but now Order LIVB. of the Rules of the Supreme Court

provides that applications under The Trustee Act, 1893, may be made by petition, except as otherwise provided under Order LV For Order LIVB. see Appendix, Part A.

By Section 5 of 47 & 48 Vict. c. 71, Section 1 of The Trustee Extension Act, 1852, is made to apply to sales (thereby authorised) of the hereditaments of the Crown in an action as if such hereditaments were vested in a subject.

This section of the Trustee Extension Act is now repealed; but it is apprehended that the Court could under the present Act make a vesting order where it has made an order for sale coming within Sub-section 1 of Section 5 of 47 & 48 Vict. c. 71 (The Intestates' Estates Act, 1884).

For the proper Form of Order see *in re Montagu, Faber v. Montagu* (1896, 1 Ch. 549). As to the effect of orders of the Court see Section 70 of The Conveyancing and Law of Property Act, 1881.

31. Where a judgment is given for the specific performance of a contract concerning any land, or for the partition, or sale in lieu of partition, or exchange, of any land, or generally where any judgment is given for the conveyance of any land either in cases arising out of the doctrine of election or otherwise, the High Court may declare that any of the parties to the action are trustees of the land and or any part thereof within the meaning of this Act, or may declare that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act, and thereupon the High Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

Vesting order consequential on judgment for specific performance, &c.

Section 31.—This section is a virtual re-enactment of Section 30 of 13 & 14 Vict. c. 60 and Section 7 of 31 & 32 Vict. c. 40 (The Partition Act, 1868). As to appointing a person to execute documents see Section 14 of The Judicature Act, 1884 (see also in *re Edwards*, 33 W. R. 578; *Howarth v. Howarth*, 11 P. D. 68; *Hoare v. Gray*, 31 Sol. J. 744; *re Cathcart*, 1893, 1 Ch. 466; and *Hood-Bars v. Cathcart*, 39 Sol. J. 639).

The High Court can make a vesting order under this section in the following cases:—

Where a judgment is given—

- (a) For the specific performance of a contract concerning any land;
- (b) For the partition of any land;
- (c) For the sale in lieu of partition of any land;
- (d) For the exchange of any land; or
- (e) For the conveyance of any land, either in cases arising out of the doctrine of election or otherwise.

The declarations upon which the High Court can, under this section, base vesting orders are—

- (i.) That any of the parties to the action are trustees of the land; or
- (ii.) That the interests of unborn persons who might claim under any party to this action, or under the will or voluntary settlement of any person deceased, who was during his lifetime a party to the contract or transactions concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of the Act.

For a series of orders applicable under this section see *Seton on Decrees*, 6th ed., Vol. II., p. 1261 *et seq.*, and Vol. III., p. 2287.

(a) A contract for the sale of leaseholds was held not to come within the section replaced by this section (*Grace v. Baynton*, 1877, W. N. 72); but in *Hall v. Hall* (51 L. T., N. S., 226) Kay, J., made an order appointing a person to execute the lease, and this decision will no doubt now be followed (see for Forms of Order *Seton on Decrees*, 6th ed., Vol. II., pp. 1264 and 1265).

(b) Orders have been made under the former Act in partition actions in *Bowra v. Wright* (4 De G. & Sm. 265); *re Molyneux* (10 W. R. 512, the case of a lunatic); *re Sherard* (1 De G. J. & S. 421); and *Shepherd v. Churchill* (25 Beav. 21).

(c) This replaces Section 7 of The Partition Act, 1868 (31 & 32 Vict. c. 40), which section is repealed by this Act.

(e) For instances of orders in foreclosure actions see *Lechmere v. Clamp* (31 Beav. 578), and *Foster v. Parker* (8 Ch. D. 147). As to the proper form of order in a foreclosure action where an infant heir at law of the mortgagor is party see *Mellor v. Porter* (25 Ch. D. 158), where a day to show cause was granted to the infant.

The cases of *Lees v. Coulton* (L. R., 20 Eq. 20), and *Basnett v. Moxon* (L. R., 20 Eq. 182) show to what extent the Court can bind *unborn persons*, in which term are included heirs of a living person.

What the Court does, in making the order, is either to declare that the persons in question "are trustees of the land" or to declare that "the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transaction concerned, are the interests of persons who, on coming into existence, will be trustees within the meaning of this Act." In *Lees v. Coulton* (L. R., 20 Eq. 20) will be found a form of order, and see also forms in *Seton on Decrees*, Vol. II., *ante*.

Section 14 of The Judicature Act, 1884, under which the Court possesses somewhat similar powers to those conferred by this section, is as follows:—"Where any person neglects or refuses to comply with a judgment, or order directing him to execute any conveyance, contract, or other document, or to endorse any negotiable instrument, the Court may, on such terms and conditions (if any) as may be just, order that such conveyance, contract, or other document shall be executed, or that such negotiable instrument shall be endorsed by such person as the Court may nominate for that purpose, and in such case the conveyance, contract, document, or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it." This power was actually exercised in *Owen v. Edwards* (33 W. R. 578) and the other cases cited above. *Re Montagu, Faber v. Montagu* (1896, 1 Ch. 549) shows that where an order is made vesting or appointing a person to convey the estate of an infant tenant in tail in possession the effect is to bar the estate tail and remainders over.

32. A vesting order under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a new trustee

Effect of vesting order.

have the same effect as if the persons who before the appointment were the trustees (if any) had duly executed all proper conveyances of the land for such estate as the High Court directs, or if there is no such person, or no such person of full capacity, then as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate as the Court directs, and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

Section 32.—This section in effect re-enacts Sections 7 to 15 of 13 & 14 Vict. c. 60 and Sections 1, 2, and 8 of 15 & 16 Vict. c. 55.

The effect of an order under this section is to be—

1. As if the persons who before the appointment were the trustees (if any) had duly executed all proper conveyances of the land for such estate as the High Court directs; or
2. If there is no trustee, as if such person had existed and been of full capacity, and had duly executed all proper conveyances of the land for such estate as the Court directs.

For a case on this section, showing the effect of a vesting order, see *re Montagu, Faber v. Montagu* (1896, 1 Ch. 549), which lays down that an order made vesting, or appointing a person to convey, the estate of an infant tenant in tail in possession operates to bar the estate tail and remainders over.

Smith v. Smith (3 Drew. 72) shows that a vesting order of a joint tenant's estate will not sever the joint tenancy. But as to the effect of a vesting order made in lunacy only see *in re Pearson* (5 Ch. D. 982); *re Chell*. (49 L. T. 196); *re Vicat* (33 Ch. D. 103); and *in re Jones* (*ibid.* 414).

33. In all cases where a vesting order can be made under any of the foregoing provisions, the High Court may, if it is more convenient, appoint a person to convey the land or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

Power to appoint person to convey.

Section 33.—This section re-enacts Section 20 of 13 & 14 Vict. c. 60.

The conveyance by the person appointed to convey should contain a recital showing it is made in obedience to the order of the Court (*ex parte* Foley, 8 Sim. 395; *Caswell v. Sheen*, 69 L. T. N. S., 854; and see also Judicature Act, 1884, Section 14). As to what covenants will be implied see *in re* Ray (1896, 1 Ch. 468), a decision in *pari materia*.

34. (1) Where an order vesting copyhold land in any person is made under this Act with the consent of the lord or lady of the manor, the land shall vest accordingly without surrender or admittance.

Effect of vesting order as to copyhold.

(2) Where an order is made under this Act appointing any person to convey any copyhold land, that person shall execute and do all assurances and things for completing the assurance of the land; and the lord and lady of the manor and every other person shall, subject to the customs of the manor and the usual payments, be bound to make admittance to the land, and to do all other acts for completing the assurance thereof, as if the persons in whose place an appointment is made were free from disability and had executed and done those assurances and things.

Section 34.—This section re-enacts Section 28 of 13 & 14 Vict. c. 60. It deals with two cases—

1. Where a vesting order of copyhold is made with the consent of the lord or lady of the manor.
2. Where an order is made appointing any person to convey any copyhold land.

1. In the first case, the consent of the lord or lady obviates the necessity of a surrender or admittance; but there is nothing to prevent the Court making an order without such consent, the effect then being to vest the property in the intended trustee, leaving it still necessary for him to obtain surrender and admittance, and this is what will usually happen. In such a case surrender is made and admittance obtained in due course on the proper fines being paid. The lord cannot, however, claim two fines for admittance, one of the customary heir (if there be one), and another for the admittance of the trustee; but only one on the admission of the new trustee (*Bristow v. Booth*, L. R., 5 C. P. 80). If the lord will consent to the vesting order, he can signify his consent by writing. This is done usually by a verified certificate of such consent (*Ayles v. Cox*, *ex parte* John Attwood, 17 Beav. 584). For Form of Consent see *Daniell's Chancery Forms*, 5th ed., p. 1080.

2. Where an order has been made appointing a person to convey, the customary assurance having been made, application will be made for admittance, which the lord or lady is bound to give, "subject to the customs of the manor and the usual payments."

The section does not very distinctly lay down that a vesting order can be made without the consent of the lord or lady of the manor; but it is clear from the cases on Section 28 of the Act of 1850, which this section replaces, that this can be done. The practice has been not to serve the lord with the petition for the vesting order, nor would it be necessary to so serve the petition or summons under the section now being discussed. A vesting order made in *re* Hurst (cited in *Seton on Decrees*, 6th ed., Vol. II., p. 1236), without the consent of the lord, renders it clear that the Court had such power under the section replaced by this section, on which the same construction will doubtless be put.

The procedure under this section will be by summons. For Form of Summons for a Vesting Order of Copyholds see Form 5, Appendix II., and for Affidavit in support of the application see Form 6, Appendix II., and see *post*, p. 198.

Vesting orders as to stock and choses in action.

- 35.** (1) In any of the following cases : namely—
- (i.) Where the High Court appoints or has appointed a new trustee ; and

(ii.) Where a trustee entitled alone or jointly with another person to stock or to a chose in action—

(a) is an infant, or

(b) is out of the jurisdiction of the High Court, or

(c) cannot be found, or

(d) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in writing has been made to him by the person so entitled, or

(e) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action for twenty-eight days next after an order of the High Court for that purpose has been served on him ; or

(iii.) Where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a chose in action is alive or dead,

the High Court may make an order vesting the right to transfer or call for a transfer of

stock, or to receive the dividends or income thereof, or to sue for or recover a chose in action, in any such person as the Court may appoint:

Provided that—

- (a) Where the order is consequential on the appointment by the Court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and
- (b) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the Court may appoint.

(2) In all cases where a vesting order can be made under this section, the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Act may transfer the stock to himself or any other person, according to the order, and the Banks of England and Ireland and all other companies shall obey every order under this section according to its tenor.

(4) After notice in writing of an order under this section it shall not be lawful for the Bank of England or of Ireland or any other company to

transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(5) The High Court may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Act is to be exercised.

(6) The provisions of this Act as to vesting orders shall apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock.

Section 35.—This section deals with the vesting of stock and choses in action and shares in ships, as the previous sections have dealt with the vesting of land, and replaces Sections 20, 22, 23, 24, 25, 26, 31, and 35 of The Trustee Act, 1850 (13 & 14 Vict. c. 60), and Sections 3, 4, 5, and 6 of The Trustee Extension Act, 1852 (15 & 16 Vict. c. 55).

The expression “stock,” by the Definition Section (Section 50, *post*), includes “*fully paid up shares; and, so far as relates to vesting orders made by the Court under this Act, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein.*”

The words “a trustee entitled alone or jointly with another person” will—as by Section 50 “trust” includes the duties incident to the office of personal representative of a deceased person—cover the case of stock standing in the name only of a deceased person where his personal representative is out of the jurisdiction or not to be found, or where it is uncertain whether such personal representative is living or dead, or where such personal representative neglects or refuses to transfer (*re Ellis’s Settlement*, 24 Beav. 426).

The jurisdiction arises on the appointment of a new trustee by the Court, and also in certain cases where a trustee *is entitled alone or jointly* with another to stock or a chose in action.

Sub-section ii.—The point raised in *re Hyatt’s Trusts* (21 Ch. D. 846), that as The Trustee Act, 1850, Section 23, only mentioned a “sole trustee” it could not apply to two trustees, would have no foundation now, as the words here are “alone or jointly.”

Sub-section ii. (a).—Where such trustee is an infant.—This replaces Section 3 of The Trustee Extension Act, 1852. Under the repealed section the Court has declared an infant beneficiary in whose name, jointly with another, funds are standing, a trustee within the section (see *re Harwood*, 20 Ch. D. 536, and *re Findlay*, 32 Ch. D. 220, 641), though the Bank of England has objected to such orders on the ground of want of jurisdiction (see *re Findlay*, 32 Ch. D. 641). Other cases of similar orders are *re Alice Kemp* (1888, W. N. 138) and *re Barnett* (1889, W. N. 216); and see *in re Dehaynin (Infants)* (1909, W. N. 251), where the Court of Appeal approved of *in re Harwood* and *in re Barnett's Estate*.

Sub-section ii. (b).—Where such trustee is out of the jurisdiction of the High Court.—The sub-section is general, and whether the trustee be an infant or lunatic the section applies. As to what is "out of the jurisdiction" see *Hutchinson v. Stephens* (5 Sim. 499).

Sub-section ii. (c).—Where such trustee cannot be found.—This means that he cannot be found after all reasonable efforts have been made to discover his whereabouts.

For cases where the Court exercised this jurisdiction, a trustee having absconded and the other three applying for a vesting order, see *Dugmore v. Suffield* (1896, W. N. 50); *re Lees' Settlement Trusts* (1896, 2 Ch. 508); and *re Fitzherbert's Settlement Trusts* (1898, W. N. 58).

It seems that in order to say that a trustee cannot be found it must be shown there is a trustee, but that it is not known where he is (see *in re Taylor's Agreement Trusts*, 1904, 2 Ch. 737, 739). In cases, however, where there is no present trustee of the trust property, but the Court has power to appoint a new trustee under Section 25 of this Act, a vesting order may be made (*in re No. 9 Bomore Road*, 1906, 1 Ch. 359; *in re Ruddington Land*, 1909, 1 Ch. 701).

Sub-section ii. (d).—Under this head are comprised various reasons for appointing a new trustee and vesting the property in him. These are—

- (i.) Neglecting or refusing to transfer stock;
- (ii.) Neglecting or refusing to receive dividends or income, or to sue or recover a chose in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in writing so to do.

The condition as to twenty-eight days applies to (i.) and (ii.), and the application cannot be served before the expiration of the twenty-eight days (*re Knox's Trusts*, 1895, 1 Ch. 538).

“*The person absolutely entitled.*”—A tenant for life is “a person absolutely entitled” only when making an application with reference to the income; but persons appointed trustees are “absolutely entitled” (*re Ellis’s Settlement*, 24 Beav. 426).

Sub-section ii. (e).—This sub-section replaces Section 4 of The Trustee Extension Act, 1852, which was inserted in view of *Mackenzie v. Mackenzie* (5 De G. & Sm. 338). The procedure in this case might be by motion instead of by summons, as under the former practice it could be by motion instead of petition (*re Holbrook’s Will*, 5 Jur., N. S., 1333), though a summons under the Rules of the Supreme Court, Order LV., Rule 2 (8), or a petition, as was the case in *re Knox’s Trusts* (1895, 2 Ch. 483), is the safer course. In this case trustees who held a residuary estate upon trust, in events which had happened, to divide the same among three sets of beneficiaries, were requested in writing by all the beneficiaries to transfer to them the various funds of which the residue consisted according to an arrangement into which they had entered. It appeared there was sufficient cash in the hands of the trustees to pay any outstanding costs which they might have to pay, but one of the two trustees refused to transfer for twenty-eight days after request. It was held that the Court had jurisdiction to make the vesting order, and to order the recalcitrant trustee to pay the costs of the application (see also *re Cathcart*, 41 W. R. 277).

The Court being empowered to vest the right “in any such person as the Court may appoint,” it has unlimited discretion, subject to the cases provided for in Provisoes (a) and (b) of the latter part of this section. For Forms of Vesting Order see *Seton on Decrees*, 6th ed., p. 1238 *et seq.*

Proviso (a).—Where there were originally three trustees and one has disappeared the correct form of order to be made is that the right to call for a transfer, &c., do vest in the petitioner and [other trustee alone] as trustees of the [settlement] and that they do transfer the sums of stock into their own names to be held by them upon the trusts of the [settlement] (*re Price*, 1894, W. N. 169, following *re Gregson’s Trusts*, 1893, 3 Ch. 233).

Sub-section 2.—This portion of the above section re-enacts the latter part of Section 20 of 13 & 14 Vict. c. 60.

Sub-section 3.—This sub-section replaces Section 26 of The Trustee Act, 1850, and Section 6 of The Trustee Extension Act, 1852. In *re Peacock* (14 Ch. D. 212), the usual order was varied, as the funds were invested in unauthorised securities, the order being for the appointment of new trustees, with the right to call for a transfer of the funds to the trustees themselves, or to any

purchaser or purchasers, the trustees undertaking to hold the proceeds on the trusts of the settlement (see *re New Zealand Trust and Loan Co.*, 1892, W. N. 169, for remarks of the Court of Appeal on the proper form of order to adopt). *Re Gregson's Trusts*, *ante*, laid down that where the stock or shares with reference to which a vesting order is being made are Government or other stock or shares upon which there is no liability for calls, and which are to be held by the trustees, the order should, as a rule, go on to direct the persons in whom the right to transfer or call for a transfer, and to receive the dividends or income, is vested to transfer the stock or shares into their own names; but where shares are being dealt with on which there is a liability to calls such directions should be omitted. But it is competent for the Judge to make an order in either form according to the special circumstances.

Sub-section 4.—Upon obtaining such an order as in this section mentioned a notice in writing should immediately be served upon the bank or other company, after which the bank or such company cannot transfer any stock or pay any dividend, except in accordance with the order.

Sub-section 5.—The Court could not, under Section 31 of 13 & 14 Vict. c. 60, which this sub-section replaces, order the fund to be paid into Court (*re Parby*, 29 L. T. 72); but it could order the trustees to pay in the fund under the Trustee Relief Act (*re Thornton's Trust*, 9 W. R. 475).

Sub-section 6.—This sub-section replaces Section 10 of 18 & 19 Vict. c. 91, which enacted as follows:—"Shares in ships registered under the said Merchant Shipping Act, 1854, shall be deemed to be included in the word 'stock,' as defined by The Trustee Act, 1850, and the provisions of such last-mentioned Act shall be applicable to such shares accordingly" (see also Merchant Shipping Act, 1894, Section 29).

The Court has jurisdiction under this section to make an order vesting the trust property in trustees who have already been appointed out of Court by deed (*in re Kenny's Trusts*, 1906, 1 Ir. R. 531).

Persons
entitled to
apply for
orders.

36. (1) An order under this Act for the appointment of a new trustee, or concerning any land, stock, or chose in action subject to a trust, may be made on the application of any person beneficially interested in the land,

stock, or chose in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(2) An order under this Act concerning any land, stock, or chose in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

Section 36.—This section, replacing Section 37 of 13 & 14 Vict. c. 60, deals with the procedure to be followed for obtaining such orders as are hereinbefore dealt with. An order appointing (i.) a new trustee, or (ii.) concerning any land, stock, or chose in action subject to a trust, may be made on the application—

- (a) Of any person *beneficially interested* in the land, stock, or chose in action, whether under disability or not.
- (b) On the application of any person *duly appointed trustee* thereof.

If an order is sought concerning any land, stock, or chose in action subject to a mortgage, then the application can be made by—

- (i.) Any person *beneficially interested* in the equity of redemption, whether under disability or not.
- (ii.) Any person *interested* in the money secured by the mortgage.

In the case of disability the usual mode of appearing by a person, *sui juris*, as next friend or committee has, of course, to be adopted.

As to the meaning of “beneficially interested,” the following cases throw some light:—A person contingently entitled to a beneficial interest is “beneficially interested” (*re Sheppard’s Trusts*, 4 De G. F. & J. 423); so, too, a purchaser in a sale of the property under the order of Court is “beneficially interested” (*Rowley v. Adams*, 14 Beav. 130); creditors, plaintiffs in an action for the administration of the real and personal estate of the testator, are “beneficially interested” therein (*re Wragg*, 1 De G. J. & Sm. 356); but the committee of a lunatic *cestui que trust* is not (*re Bourke*, 2 De G. J. & Sm. 426). A mere expectation or *spes successionis*

would not be sufficient (*Clowes v. Hilliard*, 4 Ch. D. 413). A *spes successionis* is not a title to property under English law (*re Parsons, Stockley v. Parsons*, 45 Ch. D. 51).

Application under any of these sections respecting the appointment of new trustees, and vesting the trust property in them, or in cases under the sections re-enacting The Trustee Acts, 1850 and 1852, where a judgment or order has been given or made for the sale, conveyance, or transfer of any land or stock, or a judgment or order has been made for the suing for or recovering any chose in action, would be made by summons under the Rules of the Supreme Court, LIVB, Order LV., Rule 13 (a). In all other cases the application for a vesting order would be made by petition. And it is conceived that even in cases falling within Order LV., Rule 13 (a), the application, where the facts are very complicated, might properly be made by petition. For the form of petition for a vesting order see Appendix II.

Every petition or summons for a vesting order, or the appointment of a person to convey, must state the section or sections of the Act under which it is proposed that the order shall be made (Rules of the Supreme Court, Order LIVB, Rule 4 (a)).

Powers of
new trustee
appointed
by Court.

37. Every trustee appointed by a Court of competent jurisdiction shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument (if any) creating the trust.

Section 37.—The effect of this section is that all powers, whether legal or equitable, will vest in the new trustee or trustees, and be exercisable by them. No such question can now arise as came up for decision in *Newman v. Warner* (1 Sim., N. S., 457), where it was held that a trustee appointed under the Court's ordinary jurisdiction could not exercise a legal power of sale. Under this section, whether the trustee is appointed in an action or in pursuance of a petition or summons under this Act, the trustee can exercise all the powers, legal and equitable, of the former trustees. It is apprehended, however, that neither this section nor Section 10, Sub-section (3), can be construed as enacting that powers which are by their nature personal, for example discretionary powers to withhold consent in the case of marriage, or to select a charitable

object, are exerciseable by the new trustees. The section replaces Section 35 of 44 & 45 Vict. c. 41, which in its turn replaced the latter part of Section 27 of 23 & 24 Vict. 3. 145 (Lord Cranworth's Act).

38. The High Court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be paid or raised out of the land or personal estate in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the Court may seem just.

Power to charge costs on trust estate.

Section 38.—Under this section the costs and expenses of and incident to any such application or proceeding as mentioned in the section can be ordered to be paid as the Court directs.

“*By such persons as to the Court may seem just.*”—These words would empower the Court to order a respondent to pay costs (see *Sarah Knight's Will*, 26 Ch. D. 82; *re Primrose*, 23 Beav. 590; *re Adams's Trusts*, 12 Ch. D. 634), and to make a personal order as to costs (*Sarah Knight's Will*, *ubi supra*, and *re Mills's Estate*, 34 Ch. D. 24).

The principles established by the cases decided on Section 51 of The Trustee Act, 1850, replaced by this section, and which will no doubt be closely adhered to by the Court in construing and applying this section, can be grouped as follows:—

1. Costs in cases relating to the appointment of new trustees.
2. Costs in cases of mortgagor and mortgagee.
3. Costs in cases of vendor and purchaser applications.

1. *Costs in cases relating to the appointment of new trustees.*

As a general rule, the whole costs of and incidental to the application are payable by the *corpus* of the estate or the *cestuis que trust*, though preferably by the trust estate, unless there are special reasons for making them payable otherwise (*re Parby*, 29 L. T. 72; *re Fulham*, 15 Jur. 69; *re Fellows's Settlement*, 2 Jur., N. S., 62).

The case of *Harvey v. Oliver* (1887, W. N. 149) is useful as showing what costs are properly allowed on the appointment of new trustees. These are—

- (1) Costs of the former trustees, payment of which may be demanded by the legal personal representative of the survivor of such trustees previously to his transferring the trust property.
- (2) Costs incurred by the new trustees previously to their appointment in (i.) obtaining a statement of the trust property, and (ii.) ascertaining that the power of appointing new trustees was being properly exercised.
- (3) Costs incurred in reference to the appointment of new trustees by the donee of the power of appointment.

In some cases the costs are made payable by the petitioners, as in *re Brackenbury's Trust* (L. R., 10 Eq. 45), where the reversioners, petitioning for the appointment of an extra trustee, were saddled with the costs of the application, there having originally been only one, but the petitioners desired two for their own protection. Fines payable on the admission of new trustees of copyholds were ordered to be paid rateably by the tenants for life and reversioners in proportion to their interests (*Carter v. Sebright*, 26 Beav. 374).

The new trustees have occasionally been ordered to pay the costs in the first place, which were to be a charge on the estate with interest (*ex parte Davies*, 16 Jur. 882).

Where new trustees of two funds were to be appointed the costs were ordered to be paid thereout rateably (*re Grant's Trusts*, 2 J. & H. 764).

If a trustee who has become bankrupt, and has been requested to retire, declines to do so, he will be removed at his own cost where a petition has been necessitated by his own obstinacy, unless the circumstances of his bankruptcy were such as to show that it arose from misfortune (*re Adams's Trust*, 12 Ch. D. 634). This decision is of equal validity, though the procedure is now by summons. The decision in *re Adams's Trust* somewhat detracts from the authority of *re Primrose* (23 Beav. 590), where it was decided that the Court had *no jurisdiction* to order a respondent whose conduct had caused the presentation of the petition to pay the costs; and this jurisdiction has been doubted by the Court as recently as the date of the decision in *re Sarah Knight's Will* (26 Ch. D. 82), where it was queried whether under the Judicature Acts and Order LXV., Rule 1, of the Orders of 1883, the Court has jurisdiction to order a respondent to a petition under The Trustee Act, 1850, to pay costs (see *re Mills's Estate*, 34 Ch. D. 24). It is apprehended, as stated above, that the Court has under the section now being discussed such power, since the words are

“to be borne and paid in such manner *and by such persons* as to the Court may seem just,” which appears somewhat wider than the terms in the former Act. As a general rule, a trustee served and appearing on a petition to appoint new trustees will get his costs (*Turner v. Mullineux*, 9 W. R. 252). *Richardson v. Grubb* (16 W. R. 176) was a case of a trustee petitioner having to pay all the costs because he had unnecessarily presented a petition for the appointment of new trustees.

Re Primrose, cited above, was commented on by the Lord Chancellor in *re Woodburn's Will* (1 De G. & J. 326), where he says: “That was a case in which a stranger was served with the petition: what jurisdiction could there be to make him pay costs unless the Act in terms gave it?”

The costs can be directed to be raised by mortgage of the property (*re Crabtree*, 14 W. R. 497).

2. *Costs in cases of mortgagor and mortgagee.*

The rule as between mortgagor and mortgagee is that the mortgagor must bear the costs of obtaining a reconveyance of his property (*King v. Smith*, 6 Ha. 473). Where the representative of the mortgagee is an infant, the mortgagor must pay the costs of a petition occasioned by such infancy (*ex parte Ommaney*, 10 Sim. 298); and also if the mortgagee devised the estate, instead of allowing it to descend, the mortgagor had still to pay the costs of a petition to get in the legal estate. This latter event cannot now happen, since Section 30 of The Law of Property and Conveyancing Act, 1881, enacts that the legal estate in mortgaged or trust realty of all kinds other than copyholds shall go to the personal representative of the mortgagee or trustee. Copyhold property is dealt with by Section 88 of The Copyhold Act, 1894, and descends to the customary heir.

Where a mortgagee has become lunatic the general rule, that the costs occasioned by necessary applications to get in the legal estate will come out of the mortgagor's pocket, is still the same (*re Jones*, 2 De G. F. & J. 554; *re Marrow*, Cr. & Ph. 142; *re Stuart*, 4 De G. & J. 317, which contains a full statement of the principle guiding the Court; but see, *contra*, *ex parte Richards*, 1 J. & W. 264, and *re Townsend*, 2 Ph. 348). But should the petition be presented by the committee of the lunatic mortgagee for a reconveyance of the mortgaged estate to the mortgagor, then—especially if the mortgagee be beneficially interested in the moneys—the costs come out of the lunatic's estate (*re Wheeler*, 1 De G. M. & G. 434; *re Biddle*, 23 L. J., Ch. 435; *re Thomas*, 22 L. J., Ch. 858). In *re Viall*, *Hawkins v. Perry* (8 De G. M. & G. 439), part of the costs were ordered to be paid by the mortgagee's estate. But where the petition is presented by the committee of the lunatic the mortgagor is not entitled to his costs, even though served with the petition (*re Phillips*, L. R., 4 Ch. 629).

If, in addition to being a mortgagee, such mortgagee is a trustee, the case is still clearer for making the mortgagor, or his estate, bear such costs (*re Fulham*, 15 Jur. 69; *re Lewes*, 1 M. & G. 23, where the existence of the trust appeared on the face of the mortgage). But where the trust did not appear, the costs were ordered to come out of the trust estate (*re Jones*, 2 Ch. D. 70).

In *re Sparks* (6 Ch. D. 361) each party was left to pay his own costs, as the mortgagee was of unsound mind, but *not so found*, the Court considering that it had no jurisdiction to order the costs to be paid out of the mortgage debt.

James, L. J., in that case considered the question of the jurisdiction conferred by the Act, and came to the conclusion that the Court could only order costs to be paid out of the lands or personal estate in respect of which the application is made. The section of the present Act now under consideration is, as has been pointed out, somewhat wider in terms, allowing the Court to order the costs to be borne and paid, not only in such manner (which the former Act did), but by *such persons* as might seem just to it.

As to what costs a solicitor-mortgagee will be allowed see *Field v. Hopkins* (44 Ch. D. 524), and also *Eyre v. Wynn-Mackenzie* (1894, 1 Ch. 218). In the latter case it was held that a solicitor-mortgagee cannot, in the absence of express agreement, charge the mortgagor with any profit costs, either for work done in respect of the mortgaged property as solicitor for the mortgagor, including the preparation of the mortgage to himself, or where the mortgage is of a life interest, for collecting, receiving, and distributing the income as agent for the mortgagor; but, *semble*, this rule does not preclude a partner of the solicitor-mortgagee from receiving remuneration for his trouble (*in re Doody*, 1893, 1 Ch. 129). To meet the apparant hardship created by these decisions The Mortgagees' Legal Costs Act, 1895 (59 & 58 Vict. c. 25), was passed. The material sections of this Act are as follows:—

2. (1) Any solicitor to whom, either alone or jointly with any other person, a mortgage is made, or the firm of which such solicitor is a member, shall be entitled to receive for all business transacted and acts done by such solicitor or firm in negotiating the loan, deducing and investigating the title to the property, and preparing and completing the mortgage, all such usual professional charges and remuneration as he or they would have been entitled to receive if such mortgage had been made to a person not a solicitor and such person had retained and employed such solicitor or firm to transact such business and do such acts, and such charges and remuneration shall accordingly be recoverable from the mortgagor.

(2) This section applies only to mortgages made after the commencement of this Act.

3. (1) Any solicitor to or in whom, either alone or jointly with any other person, any mortgage is made or is vested by transfer or transmission, or the firm of which such solicitor is a member, shall be entitled to receive and recover from the person on whose behalf the same is done, or to charge against the security for all business transacted and acts done by such solicitor or firm subsequent and in relation to such mortgage, or to the security thereby created or the property therein comprised, all such usual professional charges and remuneration as he or they would have been entitled to receive if such mortgage had been made to and had remained vested in a person not a solicitor, and such person had retained and employed such solicitor or firm to transact such business and do such acts, and accordingly no such mortgage shall be redeemed except upon payment of such charges and remuneration.

(2) This section applies to mortgages made and business transacted and acts done either before or after the commencement of this Act.

4. In this Act the expression "mortgage" includes any charge on any property for securing money or money's worth.

5. This Act shall not extend to Scotland.

Section 2.—Re Norris (1902, 1 Ch. 741) was a case where property belonged to one D., and was in mortgage. N., a solicitor, arranged that the mortgage should be paid off, that the property should be reconveyed to D., and that N. should lend his own money to D. on mortgage of the same property, and this was done. N. had not a partner with him in his business of a solicitor, and it was held that N. was entitled to charge the scale fee for negotiating the loan.

Section 3.—Eyre v. Wynn-Mackenzie (1896, 1 Ch. 135) decided that the Act was not intended to affect judgments given before it was passed (see also *Day v. Kelland*, 1900, 2 Ch. 745).

3. *Costs in cases of vendor and purchaser applications.*

The general rule in cases between vendor and purchaser is that the costs of procuring a person to convey under the Trustee Acts must be borne by the vendor, and, in general, the costs of an application to the Court under those Acts, and therefore presumably under this Act, to complete the title must be so borne (*Bradley v. Munton*, 16 Beav. 294), in which case, by the contract, the costs occasioned by getting a person appointed to surrender were to be paid by the purchaser.

Where property is sold in lots, the vendor must pay for the costs of a petition to the Court out of the purchase money of the particular lots, and not out of funds standing to the general credit of the cause (*Ayles v. Cox, ex parte John Attwood*, 17 Beav. 584).

Where a person has entered into a contract to sell land, and dies, leaving an infant heir, and an action is brought to have the infant declared a trustee, the rule appears to be that each party must pay his own costs. But where the vendor has devised, the costs would be borne by his estate, as it is not by the mere act of God that the estate has got into another person, necessitating an order for its re-transfer (*Purser v. Darby*, 4 K. & J. 41; and see further on this point *re Lowry's Will*, L. R., 15 Eq. 78, and *re Manchester and Southport Railway Co.*, 19 Beav. 365).

But cases of vesting orders being required as between vendor and purchaser will not be of such frequent occurrence as formerly, in consequence of Section 4 of The Conveyancing Act, 1881, which is in these terms:—

4. (1) Where at the death of any person there is subsisting a *contract enforceable* against the heir or devisee for the sale of the *fee simple* or *other freehold interest* descendible to his heirs general in any land, his *personal representative* shall, by virtue of this Act, have power to convey the land for all the estate and interest vested in him at his death, in any manner proper for giving effect to the contract.

(2) A conveyance made under this section shall not affect the beneficial rights of any person claiming under any testamentary disposition as heir or next of kin of a testator or intestate.

(3) This section applies only in cases of death after the commencement of this Act (*31st December, 1881*).

The Land Transfer Act, 1897, makes this even more certain (Sections 1 and 2), and see also Section 30 of The Conveyancing Act, 1881.

The case of *Lysaght v. Edwards* (2 Ch. D. 506) shows that to make a vendor a trustee the contract must be enforceable against both parties at the death of the vendor.

Trustees of
charities.

39. The powers conferred by this Act as to vesting orders may be exercised for vesting any land, stock, or chose in action in any trustee of a charity or society over which the High Court would have jurisdiction upon action duly

instituted, whether the appointment of the trustee was made by instrument under a power or by the High Court under its general or statutory jurisdiction.

Section 39.—This section re-enacts Section 45 of 13 & 14 Vict. c. 60, and empowers the Court to vest the property of charities in the new trustees thereof.

The power conferred by the section under the former Act was exercised in the case of *re Norton Folgate* (cited in *Seton on Decrees*, 6th ed., Vol. I., p. 1303), and also in *re Basingstoke School* (see same place).

The words of this section are wide, applying in all cases where the High Court would have jurisdiction over a charity or society upon action duly instituted.

It makes no difference, either, whether the appointment of the trustee was—

1. By instrument under a power; or
2. By the High Court itself.

The Trustee Appointment Acts, 1850 to 1890, make provision as to the appointment of trustees for religious societies within the scope of those Statutes.

As to the powers of the Board of Charity Commissioners for England and Wales to appoint or remove trustees of any charity, and to make vesting orders for or relating to the assurance, transfer, payment, or vesting of any real or personal estate belonging to a charity, see *The Charitable Trusts Act, 1860* (23 & 34 Vict. c. 136), and *Tudor on Charities and Mortmain*, 4th ed., p. 593 *et seq.*

40. Where a vesting order is made as to any land under this Act or under The Lunacy Act, 1890, or under any Act relating to lunacy in Ireland, founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or personal representative or devisee of a mortgagee is out of the jurisdiction of the High Court or cannot be found, or that it is uncertain which of several trustees or which of several devisees of a mortgagee was the

Orders made upon certain allegations to be conclusive evidence. 53 & 54 Vict. c. 5.

survivor, or whether the last trustee or the heir or personal representative or last surviving devisee of a mortgagee is living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died and it is not known who is his heir or personal representative or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any Court upon any question as to the validity of the order; but this section shall not prevent the High Court from directing a reconveyance or the payment of costs occasioned by any such order if improperly obtained.

Section 40.—This section is a re-enactment of Section 44 of 13 & 14 Vict. c. 60 and Section 140 of 53 & 54 Vict. c. 5, and prevents a vesting order made by the Court under the powers conferred by the Act being invalid by reason merely of the allegation upon which it was made being untrue; but the section empowers the Court to direct a reconveyance when it thinks fit, and to make orders as to costs occasioned by any order improperly obtained. See also The Conveyancing and Law of Property Act, 1881, Section 70.

Application
of vesting
order to
land out of
England.

41. The powers of the High Court in England to make vesting orders under this Act shall extend to all land and personal estate in Her Majesty's dominions, except Scotland.

Section 41.—The corresponding section of 13 & 14 Vict. c. 60 (Section 54), was not in quite the same terms, the words being "the dominions, plantations, and colonies belonging to Her Majesty (except Scotland)," the words in the section now under consideration being "in Her Majesty's dominions"; but this makes, it is apprehended, no material difference. Cases where lands were in Ireland and Canada occurred while the former Act was in force, and the Court under Section 54 made orders (*re Hewitt's Estate*, 6 W. R. 537; *re Tait's Trusts*, 1870, W. N. 257; *re Schofield*, 24 L. T. 322; *re Groom*, 11 L. T., N. S., 336; and see *re Lamotte*, 4 Ch. D. 325).

The powers conferred on the High Court in England by this section are now extended to the High Court in Ireland by The Trustee Act, 1893, Amendment Act, 1894 (57 Vict. c. 10), which, by its second section, enacts as follows:—"The powers conferred on the High Court in England by Section 41 of The Trustee Act, 1893, to make vesting orders as to all land and personal estate in Her Majesty's dominions, except Scotland, are hereby also given to and may be exercised by the High Court in Ireland."

Payment into Court by Trustees.

42. (1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust may pay the same into the High Court; and the same shall, subject to Rules of Court, be dealt with according to the orders of the High Court. Payment into Court by trustees.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into Court.

(3) Where any moneys or securities are vested in any persons as trustees, and the majority are desirous of paying the same into Court, but the concurrence of the other or others cannot be obtained, the High Court may order the payment into Court to be made by the majority without the concurrence of the other or others; and where any such moneys or securities are deposited with any banker, broker, or other depositary, the Court may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into Court, and every transfer, payment, and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on

the authority or by the act of all the persons entitled to the moneys and securities so transferred, paid, or delivered.

Section 42.—In considering this section the definition of *trustee* must be borne in mind. By Section 50 the expression “trust” does not include the duties incident to an estate conveyed by way of mortgage; but, with this exception, the expressions “trust” and “trustee” include implied and constructive trusts, and the duties incident to the office of personal representative of a deceased person.

The section in question (Section 42) replaces 36 Geo. III. c. 52, Section 32; 10 & 11 Vict. c. 96, Sections 1 and 2; 11 & 12 Vict. c. 68; and 12 & 13 Vict. c. 74, Section 1.

This repeal and re-enactment may give rise to some difficulty, for it was held, previous to the passing of the Act, that payment into Court under the Trustee Relief Act of an infant's fund made that infant a ward of Court, whereas a similar payment under 36 Geo. III. c. 52 did not have that effect. The reason for this distinction does not appear to be very clear, and as by the section of The Trustee Act, 1893, now under discussion no distinction exists as to the provisions under which the money is paid in, except that in the case of an infant being absolutely entitled no affidavit on payment in is required, it is difficult to see how the Court will decide the question, unless regard be had to the fact that the foundation of the jurisdiction as to an infant becoming a ward of Court is that the infant is a British subject, not that it possesses property under the control of the Court (*Brown v. Collins*, 25 Ch. D. 60), and that in every case the Court has a discretion (*ibid.*, at p. 62; see also *re Hillary*, 2 Dr. & Sm. 461, and *De Pereda and De Mancha*, 19 Ch. D. 451). The solution of the difficulty seems to be that the Court will consider the circumstances in each case.

Where an infant's legacy is payable out of the proceeds arising from the sale and conversion of a testator's residuary estate, and the trustees have power to postpone sale and conversion and payment of the legacy, the legacy in the event of postponement to bear interest, the trustees may pay the legacy into Court under this section, and thereupon the provision as to interest will cease to operate (*in re Salaman, De Pass v. Samenthal*, 1907, 2 Ch. 46, reversed by the Court of Appeal, but not on this point, 1908, 1 Ch. 4).

The subject-matter of the section may, for convenience of dealing with it, be subdivided thus—

- (A) Who may pay trust money into Court.
- (B) How payment into Court is made.

(A) *Who may pay trust money into Court.*

“Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust.”

It is quite clear that trustees, whether on express, implied, or constructive trusts, and also the personal representatives of a deceased person, whether executors or administrators, can avail themselves of this procedure.

A few examples of trusteeship which enables the holder of money to avail himself of this section may here be given.

Sub-section 6 of Section 25 of The Judicature Act, 1873, is in these terms:—“Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action, of which express notice in writing shall have been given to the *debtor trustee or other person* from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to be effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always that if the debtor trustee or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or anyone claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Act for the Relief of Trustees.”

Hence a *debtor trustee or other person* within the meaning of this section can adopt the mode of acting indicated by Section 42 of The Trustee Act, 1893, and pay the money in his hands into Court.

The owner of an estate charged with a sum in favour of another is not a trustee within the Act (*re Buckley*, 17 Beav. 110; and *Cox v. Cox*, 1 K. & J. 251, 254).

An insurance company may, since the Judicature Act above quoted, as they are debtors in respect of the funds, pay them into Court, thus rendering *Matthew v. Northern Assurance Co.* (9 Ch. D. 80) obsolete law, but there being some doubt as to this, 59 & 60 Vict. c. 8 has been passed, setting at rest any difficulty for life assurance companies. This Act is set out at the end of this note, and also the Rules which have been issued thereunder.

For a case where a mortgagee had availed himself of the provisions as to payment into Court contained in the repealed Acts see *in re Walhampton Estate*, 26 Ch. D. 391; and it seems

clear that in certain circumstances a mortgagee does become a trustee within the meaning of this Act, as, for example, when he has realised by sale the property and paid his own debt and costs. Indeed, the repealed Act, 10 & 11 Vict. c. 96, Section 1, actually had the words "all trustees . . . or other persons." These latter words do not reappear in the section of this Act now under discussion; but the definition of "trust" and "trustee" is clearly wide enough to include a mortgagee in such a position as indicated (see also *Charles v. Jones*, 35 Ch. D. 544, and especially p. 550, as to the position and rights of a stakeholder).

It had been decided that a mortgagee who has sold under his power was within the meaning of the section replaced by this one (*Roberts v. Ball*, 1 Jur., N. S., 586); but a bank which has received notice of conflicting claims respecting a deposit in its hands is not a trustee (*re Sutton's Trusts*, 12 Ch. D. 175).

"*Majority of trustees.*"—In English law, unlike that of Scotland, a majority of trustees does not, in the absence of express declaration or statutory enactment, bind a minority, except in public trusts.

"*Securities,*" by Section 50, includes stocks, funds, and shares, and, so far as relates to payments into Court, has the same meaning as in The Court of Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44). By Section 3 of that Act the term "securities" includes Government securities and any security of any foreign State, any part of Her Majesty's dominions out of the United Kingdom, or any body corporate or company, or standing in books kept by any body corporate, company, or person in the United Kingdom, and all stocks, funds, and effects.

Of course the Court can give such directions as it thinks fit as to whether the securities shall be retained in their original form or sold and re-invested differently, and probably would do so in proper cases. The last clause of Sub-section 1 of Section 42, "and the same shall, subject to Rules of Court, be dealt with according to the orders of the High Court," seems to cover such circumstances. The Supreme Court Funds Rules, 1905, deal with funds paid into Court (see *post*, Appendix II., Part B).

(B) *How payment into Court is made.*

The practice on payment into Court of trust funds has, by the Rules of the Supreme Court, Trustee Act, 1893, Order LIV.B., Rule 4, been assimilated to what it was previously to the case of *re Graham's Trusts* (1891, 1 Ch. 151). Accordingly, when a trustee or other person desires to lodge funds in Court in the Chancery Division under The Trustee Act, 1893 (see Rules of the Supreme Court, Trustee Act, 1893, Appendix I., Part A), he must, pursuant to Rule 41 of the Supreme Court Funds Rules, 1905, annex to the affidavit to be filed by him under the above-mentioned Rule 4 of

the Rules of the Supreme Court, Trustee Act, 1893, a Schedule in the same printed form as the Lodgment Schedule to an Order setting forth—

- (a) His own name and address.
- (b) The amount and description of the funds proposed to be lodged in Court.
- (c) The ledger credit in the matter of the particular trust to which the funds are to be placed.
- (d) A statement whether duty (if chargeable), or any part thereof, has or has not been paid.
- (e) A statement whether the money or the dividends on the securities so to be lodged in Court, and all accumulations of dividends thereon, are desired to be invested in any, and what, description of Government securities, or whether it is deemed unnecessary so to invest the same.

An office copy of such Schedule is to be left with the Paymaster.

Under the present practice the affidavit must shortly describe the nature of the trust, and give the names of the persons interested in the fund (*re* Waring. 16 Jur. 652). For Form of Affidavit see Appendix II., Form 12, *post*.

Where the fund consists of money or securities being or being part of or representing a legacy or residue to which an infant or person beyond the seas is absolutely entitled, and on which the trustee has paid the legacy duty, or on which no legacy duty is chargeable, the trustee may make the lodgment without an affidavit on production of the Inland Revenue certificate in manner prescribed by the Supreme Court Funds Rules for the time being in force (see Rule 4 of the Rules of the Supreme Court, Trustee Act, 1893). This replaces 36 Geo. III. c. 52, Section 32.

When a legal personal representative desires to lodge funds in Court under this Act without an affidavit he must leave with the Paymaster a request signed by him or his solicitor, with a certificate of the Commissioners of Inland Revenue, such request and certificate to be in the Form No. 16 in the Appendix to the Supreme Court Funds Rules, 1905 (see *post*, Appendix I., Part B), with such variations as may be necessary, or, as regards such certificate, in such other form as shall be from time to time adopted by the said Commissioners with the consent of the Lords Commissioners of the Treasury. Moneys or securities so lodged are to be placed to the credit mentioned in the request (see Rule 41 of the Supreme Court Funds Rules, 1905).

The money is (under the practice hitherto in force) paid to the account of the Paymaster-General "in the matter of the particular trust, describing the same by the names of the parties as accurately

as may be for the purpose of distinguishing it" (see the repealed Section 10 of 10 & 11 Vict. c. 96, and also Appendix II., Form 16). On this point the cases of *re Jervoise* (12 Beav. 209) and *re Joseph's Will* (11 Beav. 625) may be referred to. Where different trusts affect aliquot parts of the fund, the parts ought to be paid in to separate accounts (see *in re Wright*, 3 K. & J. 419).

Notice of payment in is given to the persons interested by sending them registered letters. For Form of Notice see Appendix II., Form 15, *post*.

Where the money paid in belongs to a lunatic (so found) the Court can order payment to the Poor Law Guardians for the maintenance of the lunatic. If not so found, the Court can still order maintenance (*re Upfull's Trust*, 3 M. & G. 281; *re Burke*, 2 De G. F. & J. 124).

Payment into Court was a procedure much resorted to by trustees desirous of ascertaining the persons entitled to a fund; but it should not, under the present practice, be indiscriminately resorted to (see the cases of *re Woodburn's Will*, 1 De G. & J. 333; *re Cater's Trust*, 25 Beav. 361; *re Giles*, 34 W. R. 712; and *Daniell's Chancery Practice*, p. 2080); for now, on summons under Order LV., Rule 3 (b), trustees can have the opinion of the Court as to the persons interested in a fund by taking out an originating summons (*re Giles*, 34 W. R. 712).

Sub-section 2.—"The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the moneys or securities so paid into Court." The receipt or certificate is a discharge only to the extent of the funds paid in (*Beaty v. Curzon*, L. R., 7 Eq. 194). The payment in is in effect a retirement of the trustees from their office, and they can no longer exercise their powers as trustees (*re Nettlefold's Trusts*, 1888, W. N. 120).

Costs.—The costs of the trustees incident to the payment in if not disputed, can be deducted; but if there is any difference about them, it is the proper course to pay in the whole, and apply for payment when any application is made by a person interested in the fund with reference to it (*Beaty v. Curzon*, L. R., 7 Eq. 194). But the Court cannot order repayment of costs improperly deducted on payment in. Where an application is being made for payment out, a separate proceeding must be instituted to recover the excess (*re Parker's Will*, 39 Ch. D. 303).

A trustee who entertains a reasonable doubt or difficulty as to the title of the person who claims to be his *cestui que trust* should pay the money into Court, or if the circumstances admit take out an originating summons to have the question decided (*Gunnell v. Whitear*, 10 L. R., Eq. 664). Trustees will not be allowed the costs occasioned by paying the money into Court when they do so for the mere purpose of escaping liability, and

when there is no reasonable doubt as to the performance of their trust (*re Elliott's Trusts*, 15 L. R., Eq. 194). And it has been held that the trustees of a trust fund to which their *cestui que trust* has become entitled in default of appointment by a tenant for life are justified in paying it over to him on being informed in writing by the solicitor to the parties that he has reason to believe that no appointment has been made; and would be free from liability in doing so. Trustees who under such circumstances pay the trust fund into Court will not, as a rule, be entitled to their costs (*re Cull's Trusts*, L. R., 20 Eq. 561). However, where trustees' suspicions are aroused and they have a reasonable uncertainty as to getting a proper discharge, it seems that they are justified in paying the trust fund into Court (*Hockey v. Western*, 1898, 1 Ch. 350, 356).

Where a woman (a professed nun in a French convent) by deed conveyed all her real and personal estate to trustees for the benefit of a Roman Catholic Congregation, and covenanted to assign all her future property upon the same trusts, and subsequently became entitled to a legacy, which was paid by the trustees of the will by which it was given into Court under the Trustee Relief Acts, it was, on petition by the nun and the trustees of the deed for payment out to the latter, held that the nun was not *civiliter mortua* or in such a position as to justify the trustees of the will in paying the legacy into Court, and the Court directed it to be paid out, the trustees of the deed consenting, either to the nun or to the trustees of the deed. The Court further refused to make any order as to the costs of any respondent or respondents to the petition (*in re Metcalf's Will*, 33 L. J., Ch. 308; 10 Jur., N. S., 287; 12 W. R. 538).

Payment out of Court.—Payment out or any application with reference to the fund where the money or securities in Court do not exceed £1000, or £1000 nominal value, should now be made by summons under Order LV., Rule 2 (2), and Rule 13A (d), or even if the fund exceeds that amount where the case comes under Order LV., Rule 2 (1): that is, where there has been a judgment or order declaring the rights, or where the title depends only upon proof of the identity, or the birth, marriage, or death of any person (*re Broadwood*, 55 L. J., Ch. D. 646).

Under Order LIVB., Rule 4 (a), applications to deal with funds lodged in Court under the Act are to be intitled in the same manner as the affidavit or request on which the funds were lodged. For Form see *post*, Appendix II., Form 17.

Sub-section 3.—“Where any moneys or securities are vested in any persons as trustees, and the majority are desirous of paying the same into Court, but the concurrence of the other or others cannot be obtained, the High Court” &c.—This sub-section is a re-enactment

of 12 & 13 Vict. c. 74, and under it the procedure was by way of petition (see *re Broadwood's Trusts*, 8 L. T., N. S., 622).

“And where any such moneys or securities are deposited with any *banker, broker, or other depository*, the Court may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into Court.”—Under this clause the banker, broker, or other depository has to transfer the money to the trustees, who then pay it into Court.

The provision at the end of the section that “every transfer, payment, and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the moneys and securities so transferred, paid, or delivered,” evidently means that the depositories would be no longer liable for the fund, whatever happens, after it has passed from them to the trustees.

General jurisdiction to order payment into Court.—It must not be lost sight of that the Court has inherent jurisdiction in a pending action, when an admission has been made of trust funds being in the hands of a party, to order such funds into Court, and this jurisdiction is recognised in Order XXXII., Rule 6, of the Rules of the Supreme Court, and see *Hollis v. Burton* (1892, 3 Ch. 226). An admission, to ground such an application for payment in, may be—

1. By a pleading (*Hetherington v. Longrigg*, 10 Ch. D. 162).
2. By not controverting an affidavit (*Freeman v. Cox*, 8 Ch. D. 148).
3. A verbal admission proved by an uncontroverted affidavit (*re Beeney*, 1894, 1 Ch. 499).
4. An admission by an agent or other person acting in the interest of the defendant (*London Syndicate v. Lord*, 8 Ch. D. 84, which contains a valuable discussion as to this jurisdiction at p. 90).

In *London Syndicate v. Lord*, *ante*, Jessel, M. R., said, “It has been held in the Court of Chancery for many years that an admission by an accounting party of a sum being due is sufficient to ground an order upon him to pay the sum into Court. There is not, so far as I know, any virtue in one mode of admission rather than in another. What the Court has to be satisfied of is that the defendant has admitted the amount to be due. At one time it was supposed that the admission must be in an answer, and no doubt that was the practice of the Court of Chancery before decree. It was next settled that it need not be in the answer, but that it might be in an affidavit brought in by the defendant, or in an answer to a question which he could not help answering on an examination taken by direction

of the Master. Whether it was a compulsory statement on oath or a voluntary statement on oath was immaterial, because it need not be on oath at all. A man may admit by his agent or solicitor that the sum is due; he may put in a formal admission to that effect without any oath whatever; or he may act in such a manner as to authorise a third person to admit for him. He may say 'I will admit that to be due which my accountant finds to be due. I will delegate to an accountant for me and on my behalf the right of stating the account for me, and I will admit that that is correct.' There is no difficulty in doing that, and if the Court ascertains he has done it the Court will act on the admission."

However, before a writ of attachment can be obtained against a trustee for non-compliance with an order to pay in, actual receipt by the trustee must be shown; to show mere constructive receipt by an agent or solicitor on his behalf is not enough (*re* Fewster, *Herdman v. Fewster*, 1901, 1 Ch. 477).

There is power given by Section 70 of The County Courts Act, 1888, to trustees to pay trust moneys not exceeding £500 in amount into the Post Office Savings Bank of the district. The procedure to be followed is that laid down in the County Courts Acts (see *Annual County Courts Practice*, and also Section 46 and notes thereon, p. 235 *et seq.*, *post*).

Life Assurance Company.—The Life Assurance Companies (Payment into Court) Act, 1896, now regulates the payment of life policy moneys into Court, and is as follows:—

AN ACT TO ENABLE LIFE ASSURANCE COMPANIES
TO PAY MONEY INTO COURT IN CERTAIN CASES.

21st May, 1896.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as "The Life Assurance Companies (Payment into Court) Act, 1896."

2. In this Act—

The expression "life assurance company" means any corporation, company, or society carrying on the business of life assurance, not being a society registered under the Acts relating to friendly societies.

The expression "life policy" includes any policy not foreign to the business of life assurance.

3. Subject to Rules of Court any life assurance company may pay into the High Court, or where the head office of the company is situated within the jurisdiction of the Chancery Court of the County Palatine of Lancaster either into that Court or into the High Court, any moneys payable by them under a life policy in respect of which, in the opinion of their board of directors, no sufficient discharge can otherwise be obtained.

4. The receipt or certificate of the proper officer shall be a sufficient discharge to the company for the moneys so paid into Court, and such moneys shall, subject to Rules of Court, be dealt with according to the orders of the High Court or the Palatine Court as the case may be.

5. This Act does not extend to Scotland.

Since the passing of the Act the following Rules dealing with the procedure under it have been issued:—

LIFE ASSURANCE COMPANIES (PAYMENT INTO COURT) ACT, 1896.

RULES OF THE SUPREME COURT. ORDER LIVc.

1. An assurance company desiring to make a payment into Court under the Act shall cause an affidavit by its secretary or other authorised officer to be filed, intituled “In the matter of the Policy No. effected with [*here give the name of the company*] and in the matter of the Act,” and setting forth—

(a) A short description of the policy and a statement of the persons entitled thereunder, according to the terms of the policy, with the names and addresses of such persons, so far as the same are known to the company.

(b) A short statement of the notices received by the company claiming an interest in or title to the money assured, the dates when such notices were received, the dates of withdrawal of such notices (if any) as have been withdrawn, and the names, and except as to notices withdrawn the addresses, so far as the same are known to the company, of the persons by whom such notices have been given.

(c) A statement that, in the opinion of the board of directors of the company, no sufficient discharge can be obtained otherwise than by payment into Court under the Act.

(d) The submission by the company to pay into Court such further sum (if any) whether for interest or otherwise, as the Court or a Judge may direct, and to pay any costs which the Court or a Judge may consider under the circumstances of the case ought to be paid by the company.

(e) An undertaking by the company forthwith to transmit to the Paymaster any notice of claim received by the company after the making of the affidavit, with a letter referring to the title of the affidavit.

(f) The place where the company may be served with any petition, summons, order, or notice of any proceeding relating to the money.

2. The company shall not deduct any costs or expenses of or incidental to the payment into Court.

3. No payment shall be made into Court under the Act where any action to which the company is a party is pending in relation to the policy or the moneys thereby assured, except by leave of the Judge, to be obtained by summons in the action.

4. The company shall forthwith give notice of such payment, by prepaid letter through the post, to the several persons appearing by the affidavit to be entitled to or interested in the money assured and paid into Court, or to have given notice of claim to the company, except where the notice has been withdrawn, and except so far as the name or address of any such person is unknown to the company.

5. Any person claiming to be entitled to or interested in the money paid into Court may apply in the Chancery Division by petition, or, where the amount does not exceed £1000, by summons in respect thereof.

6. No petition or summons relating to the money shall be answered or issued unless the applicant has named therein a place where he may be served with any petition or summons or notice of any proceeding or order relating to the money.

7. Unless the Court or a Judge shall otherwise direct, the applicant shall not, except when he asks for payment of a further sum or costs by the company, serve such petition or summons on the company, but shall serve the same on or give notice thereof to every person appearing by the affidavit on which payment into Court was made to

with a process of the Court, and that he cannot be found, the Court may hear and determine the action and give judgment therein against that person in his character of a trustee as if he had been duly served, or had entered an appearance in the action, and had also appeared by his counsel and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

Section 43.—This is in effect a re-enactment of Section 49 of 13 & 14 Vict. c. 60, that section being repealed by the present Act (see Section 51 and Schedule).

As to the practice under the repealed section see *Westhead v. Sale* (6 W. R. 52) and *Burrell v. Maxwell* (25 L. T., N. S., 655).

“Action” is defined under Section 100 of The Judicature Act, 1873 (36 & 37 Vict. c. 66), as being a “civil proceeding commenced by writ, or in such other manner as may be prescribed by Rules of Court, and shall not include a criminal proceeding by the Crown.”

A proceeding commenced by originating summons where prescribed by the Rules of the Supreme Court is an action within the above definition (see *re Fawsitt, Gallan v. Burton*, 30 Ch. D. 231; *re Vardon's Trusts*, 55 L. J., Ch. 259; and also *Lock v. Pearce*, 1893, 2 Ch. 271; and *re Holloway*, 1894, 2 Q. B. 163).

44. (1) Where a trustee [or other person] is for the time being authorised to dispose of land by way of sale, exchange, partition, or enfranchisement, the High Court may sanction his so disposing of the land with an exception or reservation of any minerals, and with or without rights and powers of or incidental to the working, getting, or carrying away of the minerals, or so disposing of the minerals, with or without the said rights or powers, separately from the residue of the land.

Power to sanction sale of land or minerals separately.

(2) Any such trustee [or other person], with the said sanction previously obtained, may, unless forbidden by the instrument creating the trust or direction, from time to time, without any further application to the Court, so dispose of any such land or minerals.

(3) Nothing in this section shall derogate from any power which a trustee may have under The Settled Land Acts, 1882 to 1890, or otherwise.

Section 44.—This section in effect, so far as trustees are concerned, replaces Section 2 of 25 & 26 Vict. c. 108, which Act is wholly repealed by the present Act (see Section 51 and Schedule). Section 2 of the repealed Act extended not only to trustees, but to every other person authorised to dispose of land by way of sale, and these words were held to include mortgagees (*re Beaumont's Mortgage Trusts*, L. R., 12 Eq. 86; *re Wilkinson's Mortgaged Estates*, L. R., 13 Eq. 634; *re Hirst's Mortgage*, 45 Ch. D. 263).

The effect of the total repeal of Section 2 of 25 & 26 Vict. c. 108 would, it was apprehended, be to deprive mortgagees of the power of obtaining the sanction of the Court to a sale of land and minerals separately, for the word "trustee" in this section of the present Act could hardly be taken to include a mortgagee with power of sale. Accordingly Section 3 of The Trustee Act, 1893, Amendment Act, 1894 (57 & 58 Vict. c. 10), provides that "In Section 44 of The Trustee Act, 1893, after the word 'trustee' in the first two places where it occurs shall be inserted the words 'or other person.'"

Section 19 of The Conveyancing and Law of Property Act, 1881, confers on a mortgagee, where the mortgage is made by deed, a power to sell the mortgaged property, or any part thereof, when the mortgage money has become due. It is apprehended, however, that the words "or any part thereof" apply only to a sale of a separable part of the mortgaged property in the state in which it was subjected to the mortgage (*re Yates, Batchelor v. Yates*, 38 Ch. D. 112, 121, 128), and where a mortgagee is desirous of selling minerals apart from the surface an application under this section for the sanction of the High Court is necessary.

It will be observed that the power conferred by this section may be negatived by the instrument creating the trust or direction to sell.

The application for an order under this section should apparently be made by petition (see Form 21, Appendix II.).

Order LIVB. of the Rules of the Supreme Court provides that all applications under The Trustee Act, 1893, may be made by

petition, except as otherwise provided by Order LV Order LIVb., Rule 3, says an application under Section 44 of this Act may be made by "the trustees authorised to dispose of the land," as in the said section mentioned.

There is no specific indication in the section of the mode of application, but only of the person by whom it can be made.

The beneficiaries ought to be made parties to an application under this section (*re Palmer's Will*, L. R., 13 Eq. 408), and if they do not join they must be served even though they be entitled in remainder only (*re Hardstaff*, 1899, W. N. 256).

In the case of *in re Skinner* (1896, W. N. 68 (7)), however, service on a beneficiary in remainder out of the jurisdiction known to object to a sale was dispensed with; and it seems that where the trustees have a power of sale exercisable with the consent of the tenant for life the petition need not be served on the beneficiaries (*re Pryse's Estates*, L. R., 10 Eq. 531, and *re Nagle's Trusts*, 6 Ch. D. 104). But in a case where the trustees had an absolute power of sale, Kay, J., although he made the order asked for without requiring service on the beneficiaries, intimated his opinion that in some cases of the kind service on the beneficiaries might be expedient (*re Wadsworth's Trusts*, 1890, W. N. 163).

A petition under this section by a mortgagee of land must be served on the mortgagor (*re Hirst's Mortgage*, 45 Ch. D. 263), but it seems that service on subsequent incumbrancers is not necessary (*re Beaumont's Mortgage Trusts*, L. R., 12 Eq. 86).

The Court will make an order under this section authorising the sale of land with a reservation of the minerals, or of the minerals apart from the land, in general terms without reference to any particular sale (*re Willway's Trust*, 32 L. J., Ch. 226).

For forms of an order empowering trustees to sell the surface, reserving the minerals, and also to sell the minerals separately, and of an order empowering a mortgagee to sell minerals apart from the surface, see Seton's *Judgment and Orders*, 6th ed., pp. 1748 and 1749.

45. (1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the High Court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman entitled for her separate use and restrained from anticipation, make such order as to the Court seems just, for impounding all or any

Power to make beneficiary indemnify for breach of trust.

part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

(2) This section shall apply to breaches of trust committed as well before as after the passing of this Act, but shall not apply so as to prejudice any question in an action or other proceeding which was pending on the Twenty-fourth day of December, One thousand eight hundred and eighty-eight, and is pending at the commencement of this Act.

Section 45.—This section makes a useful and important extension in the law as administered in the Courts of Equity before the passing of The Trustee Act, 1888 (51 & 52 Vict. c. 59), of which it replaces Section 6.

By virtue of it a trustee, or person claiming under him, will now be able to claim to be indemnified by a beneficiary against the consequences of a breach of trust where the breach has been committed—

1. At the instigation or request of the beneficiary; or
2. With the consent in writing of the beneficiary,

by having the beneficiary's interest impounded in whole or in part, and this, too, even where the beneficiary is a married woman entitled for her separate use, and whether with or without restraint on anticipation (but see below as to trustee's position when the beneficiary is a married woman restrained from anticipation, *Bolton v. Curre*, 1895, 1 Ch. 544, at p. 551). The Court, however, has a full discretion to give or withhold this indemnity, and the claim to it will not be granted *ex debito justitiæ*. The section applies to all breaches of trust committed as well before as after the passing of the Act, provided there was no action or other proceeding pending on the 24th December, 1888, and still pending on the 1st January, 1894, with respect to the breach in question (Sub-section 2).

The effect of this section can be most conveniently seen by referring to the law as it stood before The Trustee Act, 1888. It is clear that beneficiaries who had not been parties or privy to a breach of trust concurred in or instigated by another beneficiary could impound that other beneficiary's interest in the trust fund which might have accrued either directly or derivatively (*Irby v. Irby*, 25 Beav. 632; *Jacobs v. Rylance*, L. R., 17 Eq. 341), or been

derived from some other estate comprised in the same settlement (*Woodvatt v. Gresley*, 8 Sim. 180), to compensate the trust estate for the loss for which the beneficiary is responsible. The law is not altered on this head by this Act. The whole purview and intention of this enactment is succinctly stated in *Bolton v. Curre* (*ubi supra*) by Romer, J., as follows:—"In my opinion Section 6 of the Act of 1888 [replaced by the section now under discussion] was intended to enlarge the power of the Court as to indemnifying trustees, and to give greater relief to trustees, and was not intended, and did not operate, to curtail the previously existing rights and remedies of trustees, or to alter the law, except by giving greater power to the Court. The discretion given to the Court by Section 6 as to whether it will impound or not is a judicial discretion, and if, prior to the passing of that Act, the Court would, in a proper case, enforce the equity of the trustee, and impound the interest of a beneficiary in the hands of an assignee, then the Court would be bound to do the same in a similar case after the Act. The equity of the trustee existed as much since the Act as before; and if the Court before the Act thought fit in a proper case to enforce that equity by impounding, it will equally, since the Act, think fit to enforce the equity in a similar case and impound." And see the case of *Fletcher v. Collis* (1905, 2 Ch. 24), in which it was laid down by the Court of Appeal that Section 6 of The Trustee Act, 1888, and this section were intended to enlarge the power of the Court as to indemnifying trustees, and to give greater relief to trustees, and do not operate to curtail or affect the previously existing rights and remedies of trustees, or to alter the law except by giving greater power to the Court.

Where a beneficiary has instigated and concurred in a breach of trust committed by a trustee, the right of the trustee against the beneficiary for indemnity under the law as it existed prior to The Trustee Act, 1888, may be considered under two heads—

(A) Where the beneficiary is not himself a co-trustee of the fund.

(B) Where the beneficiary is a co-trustee.

(A) The rule was that the defaulting trustees who had been made liable had a right to be indemnified to the extent to which the concurring beneficiary in question had benefited by the breach of trust. One of the earliest cases is *Trafford v. Boehm* (3 Atk. 440), where Lord Hardwicke lays down the rule in these terms:—"If a trustee errs in the management of the trust, and is guilty of a breach, yet if he goes out of the trust with the approbation of the *cestui que trust*, it must be made good first out of the estate of the person who consented to it." This is not strictly accurate, as subsequent cases show that the trustee would be primarily liable, but with a right of indemnity over against the concurring beneficiary

to the extent to which the latter had benefited by the breach. This was the rule adopted in *Booth v. Booth* (1 Beav. 125), where the M. R. said, "If she [the widow, who was entitled to a life interest in one moiety of trust funds] has obtained any benefit from the breach of trust, the trustee ought to be compensated in respect of it."

The true rule is laid down in *Raby v. Ridehalgh* (7 De G. M. & G. 104), which is the leading case on the subject. In that case a breach of trust had been committed by the trustees, who had invested on insufficient security at the instance and request of the life tenants, who had received a higher rate of interest in consequence. Turner, L. J., in the course of the case, remarked, "Has the Court, in a suit of this nature, ever gone the length of ordering the *cestui que trust* personally to recoup the trustee?"

In giving judgment, he said, "It seems to me to be the natural consequence of the *cestuis que trustent* for life having received the income of the trust fund unduly invested, that the trustees have a right to be indemnified as against the *cestuis que trustent* for life or their estates to the extent to which those estates have been benefited by the improper investment," and he dissented from the judgment in the Court below, which made the tenants for life liable to recoup the trustees the whole sum they had been ordered to pay in respect of the loss occasioned by the breach of trust.

(b) Where the beneficiary who had concurred in the breach was also a co-trustee, the other co-trustees had a lien on his interest in the trust funds to recoup to them a proportionate share of the amount paid by them to make good the loss sustained by the trust estate (*Prime v. Savell*, 1867, W. N. 227). The rule to be applied where one of the trustees is also a *cestui que trust* and has received, as between himself and his co-trustee, an exclusive benefit by the breach of trust, is that the trustee who is a *cestui que trust* must indemnify his co-trustee to the extent of his share or interest in the trust estate, and not merely to the extent of the benefit he has received.

In *Birks v. Micklethwaite* (33 Beav. 409) the M. R. said, "When two trustees are jointly and severally liable to make good a trust fund, the plaintiff may recover the whole from either of them, and the one who pays the whole is entitled to contribution as against the other; and if there is any fund in Court in the suit which is payable to the latter, it is the daily practice to apply to the Court to impound the fund, in order to make good what is due from him." See also *Jackson v. Dickinson* (1903, W. N. 74).

Cotton, L. J., in *Bahin v. Hughes* (31 Ch. D. 390, at p. 395), after remarking that there were very few cases in which one trustee who has been guilty with a co-trustee of breach of trust, and held answerable, has successfully sought indemnity as against

his co-trustee, and while declining to lay down any limitation of the circumstances under which one trustee would be held liable to the other for indemnity, pointed out that, so far as the cases had gone, relief had only been granted against a trustee who had himself got the benefit of the breach of trust, or between whom and his co-trustees there had existed a relation which would justify the Court in treating him as solely liable for the breach of trust; but those observations, it is apprehended, only apply to cases where one defaulting trustee is endeavouring to claim total immunity by making his co-trustee liable for the whole loss.

Where one of two trustees by whom a breach of trust is committed is a solicitor, he cannot merely, because he is a solicitor, be requested to indemnify his co-trustee where that co-trustee has himself been an active participator in the breach of trust or has not participated in it merely in consequence of the advice and control of the solicitor (*Head v. Gould*, 1898, 2 Ch. 250).

Where a trustee, who is himself one of the beneficiaries, has inadvertently overpaid the other beneficiaries their shares of income he is not entitled to recover from the other beneficiaries the amounts so overpaid, or to have accrued, or future income impounded, until the shares are equalised, by reason of the fact that the trustee is himself the person responsible for the mistake that has been made (*in re Herne*, *Wilson v. Cox-Sinclair*, 1905, 1 Ch. 76).

But where readjustment is claimed by a beneficiary, who has been underpaid, it is the duty of the trustee in administering the trusts for the future to equalise the payments which have been made out of income (*Harris v. Harris* No. 2, 29 Beav. 110; *Dibbs v. Green*, 11 Beav. 483; *Livesey v. Livesey*, 3 Russ. 287).

And where a testator gave his real and personal estate to trustees upon trust to convert and invest, to pay certain annuities out of the income and to accumulate the residue thereof, and there was no direction that the annuities should be paid free of income tax, the trustees, having paid the annuities without having deducted the tax, were held liable to make good to the trust estate the amount overpaid to the annuitants (*in re Sharp*, *Rickett v. Rickett*, 1906, 1 Ch. 793).

As to the procedure for enforcing a trustee's right of contribution against his co-trustee see *Wynne v. Tempest* (1897, 1 Ch. 110), and *McCheane v. Gylès* (1902, 1 Ch. 287, 911).

Since the 24th December, 1888, the law has been, and in future under this Act will be, that a beneficiary who has instigated, requested, or consented in writing to a trustee committing a breach of trust, whether the beneficiary has benefited or not, and whether he is himself a co-trustee or not, will be liable to recoup the trustee or his co-trustee, as the case may be, to the whole extent of the beneficiary's interest in the fund; and if he has benefited

by the breach, the indemnity is not confined merely to the amount of any benefit which he may have so received, subject always, however, to the discretion of the Court as to how far the indemnity should extend.

Independently, however, of this section, a beneficiary of full contracting age and capacity who knowingly consents to a breach of trust is not entitled to relief against the trustee for any loss occasioned to that beneficiary's interest in the trust estate by reason of the breach of trust, even though he has derived no benefit thereby; and the consent to the breach of trust, if proved, need not be in writing (*Fletcher v. Collis*, 1905, 2 Ch. 24).

If a beneficiary consenting to a breach of trust has but a life interest in the trust fund, and the trustee is, at the instigation of the remaindermen, compelled to replace the trust fund, the trustee would not only not be liable to make good the loss of income suffered by the consenting beneficiary, but would as against him be entitled to retain the income arising from the moneys replaced (*Fletcher v. Collis supra*, and see *in re Somerset*, 1894, 1 Ch. 231).

And it seems that whether the beneficiary concurs in the breach of trust or only subsequently acquiesces he will, if he acted with full knowledge of the circumstances, be bound, and the trustee released from all claims by such beneficiary in respect of the breach (see the judgment of Stirling, L. J., in *Fletcher v. Collis*, 1905, 2 Ch., at p. 36).

“Such order as to the Court shall seem just for impounding” &c.— There have been two important decisions by the Court with reference to the extent of this discretion. In *Ricketts v. Ricketts* (64 L. T., N. S., 263) Romer, J., would not give the trustee the benefit of the indemnity, because in that case he must be taken to have been aware he was committing a breach of trust. This decision is dealt with at more length below. The other case was a decision of Kekewich, J. (*Griffith v. Hughes*, 1892, 3 Ch. 105). There the defendant was trustee for a married woman without power of anticipation. In February, 1884, she applied to and requested the defendant to advance to her out of the trust estate the sum of £80, stating that the advance would save her home from being sold up, as she and her husband were being pressed for payment of debts amounting to that sum. There was no document in writing signed by her instigating, requesting, or consenting to the payment. Under these circumstances the trustee was ordered to pay the £80 into Court, but with a right to resort by way of indemnity to the income payable to the beneficiary. On the point of the extent of the discretion of the Court, Kekewich, J., said (p. 108), “I think that if a Statute gives the Court power . . . to protect a trustee from loss, when, without moral dishonesty, he

has committed a breach of trust for the benefit of other persons standing on a footing of equality with himself as regards knowledge of the facts which constitute the breach of trust, and who, therefore, are not in a position to blame him for his conduct, I think, I say, that when the Statute enables that to be done if the Court shall think fit, the Court naturally leans towards exercising the power in favour of the trustee."

In *Ricketts v. Ricketts*, R. was entitled absolutely in remainder to the trust funds of his mother's marriage settlement, which she had appointed to him by deed, subject to her own life interest. By his own marriage settlement R. covenanted to pay £10,000 to his trustees within six months after his mother's death, and in case of his death in his mother's lifetime that his executors should pay his trustees during his mother's life £400 per annum, to be applied as if it were income of the £10,000. R. took the first life interest under his settlement, with remainder to his wife for life. R. assigned to his trustees, as security, the trust funds of his mother's settlement. The trustees of the mother's settlement had notice of the assignment. R. having become embarrassed, the trustees of the mother's settlement were induced, on the entreaty of R., his mother, and his wife, to apply a large portion of the trust funds in discharge of R.'s debts. The trustees of R.'s settlement brought an action against the trustees of the mother's settlement for breach of trust, claiming that they might replace the funds. The defendants counterclaimed (*inter alia*) that the interest of R. and his wife in the funds might be impounded and declared liable to indemnify them.

Romer, J., decided that R. and his wife were not, in respect of their interests under settlement, beneficiaries under the settlement of his mother, and that the trustees of the latter were not entitled to have his and his wife's interest under the former impounded under Section 6 of The Trustee Act, 1888. It is true (the Judge went on to say) that, even if he did regard those interests of R.'s wife such as to make her a "*beneficiary in the trust estate*" under the mother's settlement, he would not have been justified in impounding that interest by way of indemnity, "seeing that the defendants committed their breach of trust, not owing to any misrepresentation or deceit on her part, but with their eyes open, when they must be taken to have known that her interest could not be validly dealt with." This was not necessary for the decision of the case, and must, it is submitted, be regarded as an *obiter dictum*, and not to have too much importance attached to it since *Griffith v. Hughes* (1892, 3 Ch. 105), cited and commented on previously. In *Bolton v. Curre* (1895, 1 Ch., at p. 551) Romer, J., commented on his Lordship's own decision in *Ricketts v. Ricketts* in these terms, "I desire to say a word about my decision in the case of *Ricketts v. Ricketts*, which appears to have been misunderstood.

I did not intend to lay down, and I did not in fact lay down in that case, any general rule that a trustee who knowingly committed a breach of trust could never have his beneficiary's interest impounded. What I considered in that case was that one of the facts to be borne in mind by the Court, when asked to exercise its discretion, is whether the breach of trust was committed by the trustee knowingly; and in that case, seeing that the trustee acted knowingly, and having regard to the other circumstances of the case, I refused to remove the restraint on anticipation of the married woman's interest in order to give a security to the trustee. I adhere to what I said then; and in my judgment it is the duty of a trustee to protect a married woman against herself when she, as a beneficiary restrained from anticipation, asks him to commit a breach of trust."

"*At the instigation or request or with the consent in writing of a beneficiary.*"—Hitherto it has been at least doubtful whether the mere consent of a beneficiary to a breach was sufficient to bind that beneficiary's interest, and certainly it would not be so bound if the beneficiary were a married woman. In *Sawyer v. Sawyer* (28 Ch. D. 595), where trustees had sold out trust funds with the consent of a husband and wife, who took life interests under the settlement, and in breach of trust advanced the proceeds to the husband, he and his wife giving joint and several promissory notes to secure the amounts so advanced, which were eventually lost, the trustees claimed a right to retain the income of the property subject to the trust, in order to recoup themselves for the money which they were liable to repay in respect of the breach of trust. Chitty, J. (see p. 598), drew a distinction between *instance or request*, and *consent*. He said, "I hold that the law is, that for the trustees to be entitled to the order which they now ask against the estate for life, it must be shown that the breach of trust was committed at the instance and request of the *centuis que trustent*. I make no distinction between 'instance' and 'request,' but it must be shown clearly that the breach of trust was instigated by them, and that they were acting and moving parties in it." It was held that Mrs. Sawyer's interest could not be impounded to recoup the trustees.

The L. JJ. before whom the case came on appeal said, "Before a trustee can claim the benefit of any charge or right of retainer against the interest of a married woman in the fund, it appears to us to be reasonable that he should show that the charge or right of retainer was created by her with a full knowledge of all the circumstances. It is probable that in the case of a man of full years the Court would presume him to be so acting; but in the case of a *feme covert* we do not think the presumption exists in favour of the trustee, whose primary duty was to protect the fund for her benefit."

By the section now under consideration a distinction is drawn between "instigation or request" and "consent," since the latter has to be "in writing" to bind the beneficiary. That the "instigation" or "request" need not be in writing is clear from the ordinary grammatical construction of the phrase, and this has been decided to be the proper construction by Kekewich, J., in *Griffiths v. Hughes* (1892, 3 Ch., at p. 105).

On p. 109 Kekewich, J., said, "It is common ground that there is nothing here in writing. It is equally common ground that the payment was made at the request of the married woman who is the beneficiary. Is that request, which was presumably by parol only, no writing having been proved, sufficient to bring the case within the Statute? I have no doubt that the section might be read grammatically, 'At the instigation in writing or request in writing, or with the consent in writing': that is to say, so as to make the words 'in writing' govern or apply to all the three antecedents. But I think that that would be somewhat crabbed language, and I do not think that one can suppose the draftsman intended that; though, no doubt, to repeat the words 'in writing' three times over, as I have just done by way of explanation, would be extremely awkward. . . . Therefore, finding, as I think I do, that there may be good ground for the distinction between a consent which is to be given in writing and an instigation or request which need not be in writing, and seeing that grammatically the section will certainly bear the construction which I think ought to be given to it, I hold that the words 'in writing' apply only to consent, and are not applicable to instigation or request. In the present case, therefore, the trustee will have to pay the £80 into Court, but will be entitled to resort by way of indemnity to the income payable to the married beneficiary."

Practically, where the impulse to commit the breach of trust for which the trustee is seeking indemnity from the beneficiary has emanated from the latter, evidence of a parol instigation or request will be sufficient; while on the other hand, where the breach of trust is suggested by one beneficiary or a trustee, and another beneficiary has merely consented thereto and is not actually benefited by the breach—as, for instance, if he is a remainderman—written evidence of such consent by the latter is necessary. The consent may probably be given in any form, so long as it is in writing.

But it must be borne in mind that, independently of this Act, where a beneficiary of full contracting age and capacity knowingly consents to a breach of trust, he cannot claim relief against his trustees, and that in such a case the consent need not be in writing (see p. 226, *ante*, and the case of *Fletcher v. Collis* there referred to).

The case of *re Somerset's Settlement Trusts*, *Somerset v. Earl Poulett* (1894, 1 Ch. 231), throws considerable light on this section, and shows that even where a beneficiary may have instigated, requested, and consented in writing to an unauthorised investment,

it is necessary to show that he did it with full knowledge of the facts, and that where trustees had made an investment on an insufficient security with the consent of a beneficiary, and it was not shown that he requested that it should be made without due inquiry into the sufficiency of the security, his interest could not be impounded to make good to the trustees the amount they had to replace. In other words, in order to make a beneficiary liable under this section, it must be shown not only that he instigated, requested, or consented in writing to the investment, but that he knew the facts which would make it a breach of trust. The facts shortly were as follows:—On the marriage of one V. S., in 1875, property was vested in four trustees for V. S. and his wife for their lives, and then to be divided among their children. The property was at the time invested in stocks and shares, which were worth some £35,000. Soon after his marriage V. S. was anxious that these securities should be realised, and the proceeds invested on a mortgage of Lord Hill's Hawkstone estate in Shropshire. The trustees entertained the proposal, and employed a valuer of eminence to value the property. He estimated it at £42,750, and the trustees in 1878 ultimately advanced to Lord Hill the whole of the trust funds. In point of fact the valuation was much too high: the land only produced an income of about £1000, not enough to pay the interest on the mortgage, and even if correct it would not, according to the settled rule, have warranted the trustees in advancing more than two thirds of the amount, or £28,500. Down to 1890 the interest on the mortgage was regularly paid, but then it ceased, and it was discovered that the security was deficient. Practically, part of the trust estate was gone, though the exact loss had not been ascertained. This was an action by V. S., charging the three surviving trustees with breach of trust, and claiming that they should make good the deficiency. The defendants set up the section of The Trustee Act, 1888, relating to the limitation of actions against trustees, and claimed (in the event of being held liable) to impound the life interest of V. S.

Lindley, L. J., said that the first question raised by the appeal was whether the Statute of Limitations was a bar to the claim of V. S. to have the trust money made good, and there was also the question whether the trustees were entitled to be indemnified out of the plaintiff's life interest. The breach of trust for which the trustees were liable was the investment of trust money amounting to £35,000 upon the mortgage of the Hawkstone estate, in Shropshire, belonging to Lord Hill. The advance was made in August, 1878, and the mortgagor paid the interest to the plaintiff as tenant for life till August, 1890. The action was brought in February, 1892, more than six years after the investment, but considerably less than six years after the last payment of interest. Upon the first point the appeal, in his opinion, failed. As to the second, it was clear that the appellant *instigated, requested, and*

consented in writing to the investments; but the evidence did not show that he requested that it should be made without due inquiry into the sufficiency of the security. Whether the appellant knew at the time that the income of the estate was not, as had been stated, £1700 but £1070 a year, was a very important question. Mr. Justice Kekewich found that he did know it, and that the life interest of V. S. ought to be impounded to make good to the trustees the amount they would have to replace; but the evidence did not, in his (Lord Justice Lindley's) opinion, warrant that conclusion. For these reasons he was unable to concur with the judgment of the Court below upon the second point, and the order must be varied accordingly. The result would be that the appellant would receive the income created by the trust fund, but he would not receive any personal benefit from what the trustees had to make good.

In *Bolton v. Curre* (1895, 1 Ch. 544) a trustee's right to indemnity was held to take priority over a subsequent incumbrancer. The rate of interest chargeable against a trustee on a breach of trust is still four per cent.; but the question has been raised whether this rule should not be revised in view of the existing cheapness of money (*Owen v. Richmond*, 1895, W. N. 29).

Where, however, a trustee employs trust moneys for the purposes of his own business, or in speculative transactions for his own benefit, the rule of the Court is that he must account for the profit he makes by such employment, or, at the option of the *cestuis que trust*, be charged with interest at the rate of five per cent. (*in re Davis*, *Davis v. Davis*, 1902, 2 Ch. 314).

“Notwithstanding that the beneficiary may be a married woman entitled for her separate use and restrained from anticipation.”—This enactment affords one more instance of an Act of Parliament having been necessary to enable the Court to deal with its own creation, the restraint upon anticipation of the income of a *feme covert*, as to which Malins, V.-C., in *Stanley v. Stanley* (7 Ch. D., at p. 591), remarked, “In no case and by no device whatever can the restraint upon anticipation be evaded.” This power was exercised in *Griffiths v. Hughes* (1892, 3 Ch. 105), but not in *Ricketts v. Ricketts* (as to which see note above).

As pointed out above, it is the duty of a trustee to protect a married woman restrained from anticipation against herself when she asks him to commit a breach of trust, and if he knowingly commits a breach of trust at her request the Court will be slow to remove the restraint on anticipation in order that her life interest may be impounded to recoup him (*Bolton v. Curre*, 1895, 1 Ch. 544).

The Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), Section 39, gave the Court power, when it appeared to be for the benefit of a married woman, to bind her interest in any

property, even though she were restrained from anticipation; but this power is of course never exercised in the case of a breach of trust committed or concurred in by her.

Generally, on the mode in which the Court will exercise its discretion of removing the restraint on anticipation see *re Little, Harrison v. Harrison* (40 Ch. D. 418), which shows that the discretion will be exercised with great caution, and only where a strong case is made for it, and is not necessarily to be exercised because it will be for the benefit of the married woman.

The Court will be slow to remove the restraint where the trustee knowingly commits a breach of trust at the request of a married woman beneficiary, for a trustee ought not to be allowed to commit a breach of trust at the request or with the consent of such a beneficiary in the hope and expectation that the Court will afterwards assist him by removing the restraint on anticipation and give him a security for the breach of trust which at the time he had no right to look to (*Bolton v. Curre*, 1895, 1 Ch. 544).

Procedure.—Where the trustee who has committed the breach of trust and the beneficiary against whom he claims indemnity are already parties as defendants to an action brought in respect of the breach, Order XVI., Rule 55, of the Rules of the Supreme Court applies (*per Chitty, J.*, in *Sawyer v. Sawyer*, 28 Ch. D. 595, at p. 601).

As to Form of Order in such an action see *Butler v. Butler* (14 Ch. D. 329, at p. 334).

In *re Gilson, Gilson v. Gilson* (1894, 2 Ch. 92), where the persons from whom a trustee desired to obtain indemnity under this rule were one of the plaintiffs and a third person not a party to the action, North, J., held that the case did not fall within Order XVI., Rule 48, as the plaintiff (one of the persons to be served) was a party to the action, and also on the ground that the application was premature. Apparently the proper course in such a case would be to wait until after the delivery of the defence, and then to serve the third party with a notice under this rule, and the person who is a party already with notice under Order XVI., Rule 55, of the Rules of the Supreme Court.

If the beneficiary who has benefited is not already a party to the action, the "Third Party Procedure," under Order XVI., Rules 48 to 54, would, it is apprehended, be applicable (*Sawyer v. Sawyer, ubi supra*), being by analogy an authority to this effect (see also *re Harrison, Smith v. Allen*, 1891, 2 Ch. 349).

In *Wynne v. Tempest* (1897, 1 Ch. 110) a claim brought by a trustee by a third party notice against the partners of his deceased co-trustee, who had misapplied a fund, was held not enforceable in this manner, but only by a new action.

As to the circumstances under which a trustee sued, for breach of trust, can bring in his co-trustee by third party procedure, and

as to the service of a third party notice out of the jurisdiction, see *McCheane v. Gyles* (1902, 1 Ch. 287, 911). An instance of a new action is *Jackson v. Dickinson* (1903, 1 Ch. 947).

The trustee's equity under this section may, where the beneficiary, at whose instigation breach of trust was committed, is a party to the action, be raised by defence, and at the trial of the action leave will be given to the trustee, without going into evidence, to apply in Chambers with reference to enforcing his rights (if any) against such beneficiary (*re Holt*, *re Rollason*, *Holt v. Holt*, 1897, 2 Ch. 525; and *Molyneux v. Fletcher*, 1898, 1 Q. B. 648, 656).

Where a trustee claims contribution from a co-trustee time does not begin to run as between the co-trustees until the claim of the *cestui que trust* has been established against one of them (*Robinson v. Harkin*, 1896, W. N. 72 [15]).

For Form of Notice to be served under Order XVI. see *Bahin v. Hughes* (31 Ch. D., at p. 392), and Appendix 11., Form 22.

Trustees have a right to retain trust property as against a beneficiary who owes money to them as trustees under the instrument creating a trust (*Burridge v. Rowe*, 1 Y. & C. C., Ch. 183, 192; 13 L. J., Ch. 173; 8 Jur., O. S., 299; *re Watson*, 1896, 1 Ch. 925; and *Stammers v. Elliott*, 3 L. J., Ch. 195).

It seems that this right exists even in favour of trustees of a voluntary settlement where such settlement has been so completed as to be enforceable by the Court (*re Weston*, *Davies v. Tagart*, 1900, 2 Ch. 164).

For a decision as to the right of indemnity of trustees of a club see *Wise v. Perpetual Trustee Company, Limited* (1903, A. C. 139).

Although as between trustees and their *cestuis que trust* each trustee, where a breach of trust is committed, is individually liable for the whole amount of the loss incurred by the trust estate, yet, as between the trustees themselves, some or one of them only may be directly responsible for such loss and primarily liable, and in such a case the trustees or trustee so responsible are bound in equity to indemnify their co-trustees.

Where two trustees are held liable for a breach of trust, and as between them one is primarily liable, the trustee so liable is not only bound to indemnify his co-trustee against the amount which he has to pay to the trust estate, but is also liable for the costs of his co-trustee (*The Millwall*, 1905, P. 155, at p. 176).

A solicitor trustee, to whom the management of the trust has been left as the acting trustee, is liable to indemnify his co-trustee against the costs of an action caused by his negligent conduct of the trust business, even where no actual loss has been thereby occasioned to the trust estate (*in re Linsley*, *Cattley v. West*, 1904, 2 Ch. 785).

Jurisdiction of palatine and county courts.

46. The provisions of this Act with respect to the High Court shall, in their application to cases within the jurisdiction of a palatine court or county court, include that court, and the procedure under this Act in palatine courts and county courts shall be in accordance with the Acts and rules regulating the procedure of those courts.

Section 46.—This section replaces Section 11 of 17 & 18 Vict. c. 82 (The Court of Chancery of Lancaster Act, 1854), and Section 8 of 52 & 53 Vict. c. 47 (The Palatine Court of Durham Act, 1889), and also a portion of Section 21 of 13 & 14 Vict. c. 60 (The Trustee Act, 1850). This enactment would not, it is apprehended, permit the County or Palatine Court to make orders in lunacy (*re Ormerod*, 3 De G. & J. 249).

The High Court.—By The Interpretation Act, 1889, “High Court,” when used with reference to England or Ireland, shall mean His Majesty’s High Court of Justice in England or Ireland as the case may be.

Cases within the jurisdiction of a Palatine Court.—The Palatine Courts which have jurisdiction in trust matters are the Courts of Chancery of the County Palatine of Durham and of the County Palatine of Lancaster.

By Section 16 of The Judicature Act, 1873, the jurisdiction of the Court of Common Pleas at Lancaster and at Durham was vested in the High Court of Justice, leaving the Chancery jurisdiction still subsisting, except in the matter of appeals in Lancaster, which jurisdiction is vested in the Court of Appeal (see Judicature Act, 1873, Section 18, Sub-section 2).

As to the Palatine Court of Durham, the Palatine Court of Durham Act, 1889 (52 & 53 Vict. c. 47), amends and regulates the practice and proceedings therein. Section 8 of that Act, which authorised the Palatine Court to exercise all the powers and authorities under The Trustee Act, 1850, is repealed by this Act (see Section 51 and Schedule), but the section now under discussion replaces it.

The procedure and practice in the Court of Chancery of the County Palatine of Lancaster is dealt with in The Chancery of Lancaster Act, 1890 (53 & 54 Vict. c. 23).

Section 3 of that Act enacts that the Court of Chancery of the County Palatine shall, as regards all persons, bodies corporate, and property within or becoming subject to its jurisdiction, have and

exercise the like powers and jurisdiction, and in a similar manner, and subject to the same restrictions in all respects as the High Court in its Chancery Division now has and exercises, or may under or by virtue of any Act of Parliament hereinafter passed, and not expressly enacting to the contrary hereof, have and exercise in respect of all persons, bodies corporate, and property within its jurisdiction.

Cases within the jurisdiction of a County Court—

(A) *As to County Courts in England.*

The County Courts Act, 1888 (51 & 52 Vict. c. 43), consolidated and extended the provisions of the former County Courts Acts. The County Court jurisdiction in matters the subject of The Trustee Act, 1893, is defined in Sections 67 and 68 of The County Courts Act, 1888, which (omitting immaterial provisions) are as follows:—

67. The Court shall have and exercise all the powers and authority of the High Court in the actions or matters hereinafter mentioned: that is to say—

2. For the execution of trusts in which the trust estate or fund shall not exceed in amount or value the sum of five hundred pounds:
5. Under the Trustees Relief Acts, or under the Trustee Acts, or under any of such Acts in which the trust estate or fund to which the action or matter relates shall not exceed in amount or value the sum of five hundred pounds:

In all such actions or matters the Judge shall, in addition to the powers and authorities possessed by him, have all the powers and authorities, for the purposes of this Act, of a Judge of the Chancery Division of the High Court, and the treasurer, registrar, and the high bailiff respectively shall in all such actions or matters discharge any duties which an officer of the said Division can discharge, either under the order of a Judge of the said Division, or under the practice thereof, and all officers of the Courts shall in discharging such duties conform to any rules or orders made in that behalf under this Act.

It will be noticed that the former part of this section says that the County Court “shall have and exercise all the powers and authority of the High Court under the Trustees Relief Acts, or under the Trustee Acts, or under any of such Acts.” These Acts are practically repealed by The Trustee Act, 1893; hence the question arises, “Has the County Court jurisdiction in trust matters where the trust estate or fund to which the action relates

shall not exceed five hundred pounds?" It is clear that the jurisdiction cannot be said to exist by virtue of the words "or under any of such Acts," because The Trustee Act, 1893, is obviously not any of such Acts, but the jurisdiction is preserved by Section 46 of The Trustee Act, 1893. That section seems to contemplate the application of the provisions of The Trustee Act, 1893, to the County Court jurisdiction as it existed at the time of the passing of the Act, at which period the County Court had jurisdiction up to a certain limit under the County Courts Act. In any event Section 38 of The Interpretation Act, 1889, would seem to save the jurisdiction of the County Courts, and, by virtue of it, in construing Section 67 of The County Courts Act, 1888, the references to the Trustees Relief Acts and the Trustee Acts must, it is submitted, be read as referring to The Trustee Act, 1893. Section 38 of the Interpretation Act enacts that "where this Act or any Acts passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted." This view has in fact been upheld in an unreported case within the knowledge of the present Editors, where a vesting order of a trust fund under five hundred pounds in value was made under this Act by a Judge of a County Court.

The following section of The County Courts Act, 1888, deals with the limits of the jurisdiction of the County Court:

68. If during the progress of any action or matter under the last preceding section it shall be made to appear to the Judge that the subject matter exceeds the limit in point of amount to which the jurisdiction of the Court is therein limited, it shall not affect the validity of any order already made, but it shall be the duty of the Judge to direct the action or matter to be transferred to the Chancery Division of the High Court, and the whole of the procedure in the said action or matter when so transferred shall be regulated by the Rules of the Supreme Court: Provided always that it shall be lawful for any party to apply to a Judge of the said Division at Chambers for an order authorising and directing the action or matter to be carried on and prosecuted in the County Court, notwithstanding such excess in the amount of the limit to which equitable jurisdiction is given by the said section; and the Judge, if he shall deem it right to summon the other parties, or any of them, to appear before him for that purpose, after hearing such parties, or in default of the appearance of all or any of them, shall have full power to make such order.

The County Court Rules, 1903, provide for the administration of trusts (within the limits of the County Court jurisdiction) and the determination of questions relating to trust funds within the same limits (see County Court Rules, 1903 and 1904, Order III., Rules 18 *et seq.*; Order VI., Rule 5; and Order XXII., Rule 14; and *The Annual County Courts Practice, 1910*, Vol. I., p. 528 *et seq.*). These Rules also provide for the payment of trust funds into Court (see *The Annual County Courts Practice, 1910*, Vol. I., p. 547, and Order XXXVIII), and also for applications for the direction of the Court as to investment, or for payment out or distribution of the fund in Court (see *The Annual County Courts Practice, 1910*, p. 549 *et seq.*; and County Court Rules, 1903 and 1904, Order XXXVIII). The following are the sections of The County Courts Act, 1888, dealing with this subject:—

70. Any moneys, annuities, stocks or securities, vested in any persons as trustees, executors, administrators, or otherwise upon trusts within the meaning of the Trustees Relief Acts, where the same do not exceed in amount or value the sum of five hundred pounds, upon the filing by such trustees or other persons, or the major part of them, with the Registrar of the Court within the district of which such persons or any of them shall reside of an affidavit shortly describing according to the best of their knowledge the instrument creating the trust, may, in the case of money, be paid into a Post Office savings bank established in the town in which the Court is held in the name of the Registrar of such Court, in trust to attend the orders of the Court, and upon such persons filing with the Registrar the receipt or other document given to them by the officer of the said bank, the Registrar shall record the same and give to them an acknowledgment in such form as may be prescribed, which acknowledgment shall be a sufficient discharge to such persons for the money so paid, and in the case of stocks or securities may be transferred or deposited into or in the names of the Treasurer and Registrar of such Court in trust to attend the orders of the Court, and the certificate of the proper officer of the transfer or deposit of such stocks or securities shall be a sufficient discharge to such persons for the stocks or securities so transferred or deposited, and for the above purposes all the powers and authorities of the High Court shall be possessed and exercised by the Courts, and any order made by virtue of such powers and authorities shall fully protect and indemnify all persons acting under or in pursuance of such order.

71. Any money paid into Court in the actions or matters mentioned in the last four preceding sections shall,

unless otherwise ordered by the Judge, be invested by the Registrar in his name as Registrar, within forty-eight hours of its payment into Court in a Post Office savings bank established in the town in which the Court is held, without restriction as to amount and without the declaration required of a depositor in a savings bank, and no part of any money invested in a Post Office savings bank under this Act shall be paid out to any Registrar, except upon an authority addressed to the Postmaster-General by the Treasury.

Any person deriving any benefit under any moneys paid into a Post Office savings bank under the provisions of this Act may, nevertheless, open an account in a Post Office savings bank, or in any other savings bank in his own name, without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

By Sub-section 2 of Section 75 proceedings under The Trustee Acts, 1850 and 1852, shall be taken in the Court within the district in which the person or persons making the application, or any of them, resides or reside.

As to the procedure generally in trust matters in the County Court see *The Annual County Courts Practice, 1909*, Vol. I., pp. 532 *et seq.*

(B) *As to County Courts in Ireland.*

The County Officers and Courts (Ireland) Act, 1877 (40 & 41 Vict. c. 56), confers jurisdiction on the Civil Bill Courts in Ireland (see Sections 33 (b) and (i), 34 to 39, and 40 (f)).

PART IV.

MISCELLANEOUS AND SUPPLEMENTAL.

47. (1) All the powers and provisions contained in this Act with reference to the appointment of new trustees, and the discharge and retirement of trustees, are to apply to and include trustees for the purposes of The Settled Land Acts, 1882 to 1890, whether appointed by the Court or by the settlement, or under provisions contained in the settlement.

Application to trustees under Settled Land Acts of provisions as to appointment of trustees.

(2) This section applies and is to have effect with respect to an appointment or a discharge and retirement of trustees taking place before as well as after the commencement of this Act.

(3) This section is not to render invalid or prejudice any appointment or any discharge and retirement of trustees effected before the passing of this Act, otherwise than under the provisions of The Conveyancing and Law of Property Act, 1881.

44 & 45 Vict. c. 41.

Section 47.—This section replaces Section 17 of The Settled Land Act, 1890 (53 & 54 Vict. c. 69), such last-mentioned section being repealed by the present Act.

The repealed section was enacted for the purpose of meeting the case of *re Wilcock* (34 Ch. D. 508), in which it was doubted whether Section 31 of The Conveyancing and Law of Property Act, 1881 (which section is now repealed and replaced by Section 10 of the present Act), applied to trustees appointed for the purposes of the Settled Land Acts.

Neither the tenant for life nor a person who might become tenant for life ought to be appointed a trustee of a settlement for the purposes of the Settled Land Acts, for one of the duties

of the trustees is to check the proceedings of the tenant for life (*re Harrop's Trusts*, 24 Ch. D. 717, 719); and on the same grounds the solicitor of the tenant for life ought not to be appointed (*Wheelwright v. Walker*, 23 Ch. D. 752, 763; and *re Kemp's Settled Estates*, 24 Ch. D. 485). It is undesirable that near relatives should be appointed trustees for the purposes of the Act, for there ought to be two independent trustees (*re Knowles's Settled Estates*, 27 Ch. D. 707).

For Form of Appointment of a New Trustee under the Settled Land Acts see *post*, Appendix II., Form 23.

In the case of *in re Simpson and in re Whitechurch* (1897, 1 Ch. 256) it was held by the Court of Appeal that the Court had jurisdiction under the Settled Land Acts to appoint Colonial trustees, and that the persons proposed ought to be appointed, according to the form in *re Wright's Trusts* (24 Ch. D. 662), trustees of the settlement for the purposes of the Settled Land Acts; but very special circumstances must exist to induce the Court to do this.

Sub-section 2.—It will be observed that the section is to have a retrospective effect, and makes valid appointments, discharges, and retirements of trustees made under The Conveyancing Act, 1881, before this Act came into operation.

Trust
estates not
affected by
trustee
becoming
a convict.

33 & 34 Vict.,
c. 23.

48. Property vested in any person on any trust or by way of mortgage shall not, in case of that person becoming a convict within the meaning of The Forfeiture Act, 1870, vest in any such administrator as may be appointed under that Act, but shall remain in the trustee or mortgagee, or survive to his co-trustee or descend to his representative as if he had not become a convict: provided that this enactment shall not affect the title to the property so far as relates to any beneficial interest therein of any such trustee or mortgagee.

Section 48.—This section replaces Sections 46 and 47 of The Trustee Act, 1850 (13 & 14 Vict. c. 60), which sections are repealed by the present Act (see Section 51 and Schedule).

The repealed sections were almost identical in their terms with Sections 3 and 5 of 4 & 5 Will. IV. c. 23, which Act was repealed by The Trustee Act, 1850.

By The Forfeiture Act, 1870 (33 & 34 Vict. c. 23), it is enacted that after the passing of that Act (4th July, 1870) no confession, verdict, inquest, conviction, or judgment of or for any treason, or felony, or *felo de se*, shall cause any attainder or corruption of blood, or any forfeiture or escheat, provided that nothing in that Act shall affect the law of forfeiture consequent upon outlawry. By Section 9 the Crown is empowered to appoint an administrator of the convict's property, and the Act makes provision for the vesting of the convict's property in the administrator for all the convict's estate and interest therein, and also makes provisions as to the mode in which such property is to be applied.

By Section 6 of The Forfeiture Act, 1870, the expression "convict," as used in the Act, is to be deemed to mean any person against whom, after the passing of the Act, judgment of death or penal servitude shall have been pronounced or recorded upon any charge of treason or felony.

Outlawry in civil proceedings is abolished by 42 & 43 Vict. c. 59, Section 3.

As to the power of the Court to appoint a new trustee in substitution for a trustee who is convicted of felony, and to make a vesting order on the appointment of such new trustee, see Sections 25, 26, and 32 of the present Act.

49. This Act, and every order purporting to be made under this Act, shall be a complete indemnity to the Banks of England and Ireland, and to all persons for any acts done pursuant thereto; and it shall not be necessary for the bank or for any person to inquire concerning the propriety of the order, or whether the Court by which it was made had jurisdiction to make the same.

Section 49.—This section is supplemental to Sections 35 and 42 of the present Act, and in effect replaces 11 & 12 Vict. c. 68, 12 & 13 Vict. c. 74, and Section 7 of 15 & 16 Vict. c. 55.

50. In this Act, unless the context otherwise requires—

The expression "bankrupt" includes, in Ireland, insolvent:

'Contingent right.'

The expression "contingent right," as applied to land, includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent.

Section 50.—"Contingent right."—This definition is taken from the definition of "contingent right" in Section 2 of 13 & 14 Vict. c. 60, which definition was in its turn taken from 8 & 9 Vict. c. 106, with the purpose, no doubt, of including all the estates and interests over which that Act gives a power of disposition.

"Convey" and "Conveyance."

The expressions "convey" and "conveyance" applied to any person include the execution by that person of every necessary or suitable assurance for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seised or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of the conveyance, including the acts to be performed by married women and tenants in tail in accordance with the provisions of the Acts for abolition of fines and recoveries in England and Ireland respectively, and also including surrenders and other acts which a tenant of customary or copyhold lands can

himself perform preparatory to or in aid of a complete assurance of the customary or copyhold land :

“*Convey*” and “*Conveyance*.”—See 13 & 14 Vict. c. 60, Section 2, and 44 & 45 Vict. c. 41, Section 2 (v.), Tenants in tail. So, where there was an adult tenant for life with infant tenant in tail, a vesting order of the infant’s estate with the consent of the tenant for life as protector to bar the entail will pass the estate (*Powell v. Matthews*, 1 Jur., N. S., 973). As to copyholds see *Rowley v. Adams* (14 Beav. 130).

The effect of these words in an order appointing a person to convey the estate of an infant tenant in tail is to bar the estate tail and remainders over (*re Montagu*, *Faber v. Montagu*, 1896, 1 Ch. 549, which contains an order showing the correct form).

The expression “*devisee*” includes the heir “*Devisee*.” of a devisee and the devisee of an heir, and any person who may claim right by devolution of title of a similar description :

“*Devisee*”—See 13 & 14 Vict. c. 60, Section 2.

The expression “*instrument*” includes Act “*Instrument*.” of Parliament.

The expression “*land*” includes manors “*Land*.” and lordships, and reputed manors and lordships, and incorporeal as well as corporeal hereditaments, and any interest therein, and also an undivided share of land :

“*Land*”—“*Land*,” by The Interpretation Act, 1889, Section 3, includes messuages, tenements, and hereditaments, houses and buildings *of any tenure*, and, in addition, includes, when used in this Act, manors and lordships, and reputed manors and lordships, and incorporeal as well as corporeal hereditaments, and any interest therein, and also an undivided share of land. Leaseholds, consequently, would be within this definition, since it includes messuages, tenements, &c., *of any tenure*. As “*land*” includes incorporeal hereditaments, it would, it is conceived, extend to rent charges.

See *re Harrison* (*Seton on Decrees*, 6th ed., p. 1218); and see also 13 & 14 Vict. c. 60, Section 2, and 44 & 45 Vict. c. 41, Section 2 (ii.) and (iv.).

“Mort-
gage” and
“Mort-
gagee.”

The expressions “mortgage” and “mortgagee” include and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee;

“*Mortgage*” and “*Mortgagee*” include and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee. This definition may be compared with that contained in The Conveyancing and Law of Property Act, 1881, of “Mortgage,” as it no doubt comprises the same extent of rights. In that Act “‘mortgage’ includes any charge on any property for securing money or money’s worth; and mortgage means money or money’s worth secured by a mortgage; and mortgagor includes any person from time to time deriving title under the original mortgagor; or entitled to redeem a mortgage according to his estate, interest, or right in the mortgaged property; and ‘mortgagee’ includes any person from time to time deriving title under the original mortgagee.”

There appears to be no doubt that, according to the true interpretation of this section, equitable mortgages are comprised in it (see also and compare 13 & 14 Vict. c. 60, Section 2).

“Pay” and
“Payment.”

The expressions “pay” and “payment,” as applied in relation to stocks and securities and in connexion with the expression “into Court,” include the deposit or transfer of the same in or into Court:

“*Pay*” and “*Payment*.”—These expressions occur in Section 42, dealing with “Payment into Court by Trustees.” Trustees who have “money or securities belonging to a trust may pay the same into the High Court”; and by Sub-section 3 of the same section the High Court “may order *payment* into Court”; and, as interpreted by this section, the securities can be deposited in or transferred into Court without change of investment.

The expression "possessed" applies to receipt "Possessed."
of income of, and to any vested estate
less than a life estate, legal or equitable,
in possession or in expectancy, in any
land :

"*Possessed.*"—See and compare 13 & 14 Vict. c. 60, Section 2, and
44 & 45 Vict. c. 41, Section, 2 (iii.)

The expression "property" includes real and "Property."
personal property, and any estate and
interest in any property, real or
personal, and any debt, and any thing in
action, and other right or interest,
whether in possession or not :

"*Property*" includes—(a) Real property ; (b) Personal property ;
(c) Any estate and interest in any property, real or personal ; (d) Any
debt ; (e) Any thing in action ; (f) Any other right or interest, in
possession or not.

Where the word "property" occurs in the Act, it must, however,
be taken in conjunction with the context, and construed accordingly.
In Section 5, Sub-section 1 (a), for instance, the word "property"
apparently applies only to real estate.

This definition reproduces that contained in 44 & 45 Vict. c. 41,
Section 2 (i.), and 45 & 46 Vict. c. 39, Section 1, Sub-section 4 (i.).

It is scarcely necessary to further comment on the terms here
used, except to say that a debt is a species of "things in action," and
means the right of suing for money due.

By Sub-section 6 of Section 25 of 36 & 37 Vict. c. 66, any debt or
legal chose in action is assignable by writing if the assignment is
absolute, and express notice in writing shall have been given to the
debtor trustee or other person from whom the assignor would have
been entitled to receive or claim such debt or chose in action.

The expression "rights" includes estates and "Rights."
interests :

The expression "securities" includes stocks, "Secu-
funds, and shares ; and so far as relates rities."

to payments into Court has the same meaning as in The Court of Chancery (Funds) Act, 1872 :

35 & 36 Vict.
c. 44.

“*Securities.*”—See and compare 44 & 45 Vict. c. 68, Section 2, and 35 & 36 Vict. c. 44.

Section 3 of The Court of Chancery (Funds) Act, 1872, is as follows:—“The term ‘Securities’ includes Government securities, and any security of any foreign State, any part of Her Majesty’s dominions out of the United Kingdom, or any body corporate or company, or standing in books kept by any body corporate, company, or person in the United Kingdom, and all stocks, funds, and effects.”

As to the meaning of “securities” in a will where testator declared that moneys might be invested in such securities as his trustees should think fit see *In re Rayner* (1904, 1 Ch. 176), followed in the case of *In re Gent and Eason’s Contract* (1905, 1 Ch. 386).

“Stock.”

The expression “stock” includes fully paid-up shares, and, so far as relates to vesting orders made by the Court under this Act, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein :

“*Stock.*”—See and compare 52 & 53 Vict. c. 32, Section 9, and 13 & 14 Vict. c. 60, Section 2.

The definition of “stock” with relation to vesting orders would apparently include shares in a joint stock banking company (*re Angelo*, 5 De G. & Sm. 278), an annuity with a life assurance society (see *re Tweedy*, 28 Ch. D. 529, 531), and also shares in ships registered under The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), Section 2 (see *ante*, Section 35, Sub-section (6)).

The word “stock” in The Trustee Act, 1850, and The Trustee Extension Act, 1852, was held in *re New Zealand Trust and Loan Co.* (1893, 1 Ch. 403; see also, 1893, 3 Ch. 233) to include shares in a limited company, whether fully paid up or not. Mr. Justice Lindley (see 1893, 1 Ch. 410) said, “In the first place he says that Section 35 of The Trustee Act, 1850, does not apply to shares not fully paid up. . . . I have known orders

made under the Act with regard to shares not fully paid up for the last thirty years. . . . I cannot help thinking, however, looking at Section 2, that the language is ample enough to comprise shares not fully paid up. In *re Angelo* (5 De G. & Sm. 278) it was held that the definition of the word 'stock' in Section 2 applied to 'shares' in a joint stock company; but I do not know that the point now taken up by the appellants has arisen before for decision with regard to shares not fully paid up. I should say that the practice of making orders under the Act extending to shares not fully paid up is well founded; and, in my opinion, that objection is untenable." As Section 2 of The Trustee Act, 1850, is replaced by this section, the same construction will doubtless be given to the word "stock." The word also obviously covers all descriptions of Consols, as they are securities "transferable in books kept by any company or society."

"*Any company.*"—It is apprehended that these words would not extend to a foreign company which does not carry on its business here, nor to a Scotch company (see Section 41, *ante*).

The expression "transfer," in relation to "Transfer." stock, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee:

"*Transfer.*"—See and compare 13 & 14 Vict. c. 60, Section 2, and 15 & 16 Vict. c. 55, Section 6.

The expression "trust" does not include "Trust" the duties incident to an estate con- and "Trustee." veyed by way of mortgage; but, with this exception, the expressions "trust" and "trustee" include implied and constructive trusts, and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of personal representative of a deceased person.

"*Trust*" and "*Trustee.*"—The expression "trustee" has, for the purposes of the Act, three meanings assigned to it: viz.—

1. An Express Trustee.

2. Personal Representative: being—

(a) An Administrator.

(b) An Executor.

3. A Constructive or Implied Trustee.

These meanings are not rendered inapplicable merely by reason of the trustee having a beneficial interest in the trust property. But the words do not include the duties incident to an estate conveyed by way of mortgage. In *re Osborn's Mortgage Trusts* (L. R., 12 Eq. 392) a mortgage of realty was made to two persons, one of whom afterwards went abroad. Upon a sale of the mortgaged property by the mortgagor so much of the purchase money as was payable to the mortgagees was invested in their joint names. The Court held it had no jurisdiction to make an order vesting in the purchaser the estate of the absent mortgagee. Lord Romilly said there were possibly two cases in which the Court might have authority under this section (Section 10 of The Trustee Act, 1850, now replaced by Sections 26 and 32 of this Act) to appoint a person to convey the estate of a mortgagee who has been paid off. One is where the advance has been made out of trust funds, and a new trustee has been appointed in consequence of one of the former trustees being resident out of the jurisdiction. Another case is where two persons advance distinct sums out of their own moneys to make up one single sum: then if each were paid off and gave a receipt in full for all that was due to him, it might amount to a declaration that he was merely a trustee of the legal estate, and the Court might possibly make an order.

The case of *re Walker's Mortgage Trusts* (3 Ch. D. 208) was such a case as that contemplated in the first of the instances referred to by Lord Romilly in the above case. *Re Underwood* (3 K. & J. 745) is another case of a mortgage security being held by reason of its terms to create a trust. *Locking v. Parker* (L. R., 8 Ch. 30) is the leading authority for the proposition that a mortgage even in the form of a trust for sale does not make the mortgagee a trustee in the ordinary sense for the mortgagor, though he may, after a sale, become trustee for him of the surplus proceeds of sale after paying off the incumbrances.

Trustees, whether express, constructive, or implied, and executors and administrators, when acting in the duties incident to the office of personal representatives of a deceased person, will accordingly have the powers and be entitled to the protection afforded by the Act. But the Court has no power to appoint persons to act as executors (*re Moore, McAlpine v. Moore*, 21 Ch. D. 778, and *re Willey*, 1890, W. N. 1), though where the duties of executors as such are at an end, trustees may be appointed to carry on the trusts (*Eaton v. Daines*, 1894, W. N. 32).

Under Sub-section 2 of Section 6 of The Public Trustee Act, 1906 (6 Edw. VII. c. 53), however, any executor who has obtained

probate, or any administrator who has obtained letters of administration, and notwithstanding he has acted in the administration of the deceased's estate, may, with the sanction of the Court, and after such notice to the persons beneficially interested as the Court may direct, transfer such estate to the Public Trustee for administration, either solely or jointly with the continuing executors or administrators, if any; and the order of the Court sanctioning such transfer will, subject to the provisions of that Act, give to the Public Trustee all the powers of such executor and administrator (see *post*, p. 322).

“*Duties incident to the office of personal representative of a deceased person.*”—See note to Section 22, *ante*, p. 135, and note to Section 23, *ante*, p. 139.

What may be the exact meaning of “*a trustee whose trust arises by construction or implication of law*” is open to much judicial interpretation. Trusts are divided by Lewin (*On the Law of Trusts*, 11th ed., p. 2) as follows:—

1. Trusts by Act of a Party.
2. Trusts by Operation of Law.

As to 1.—Trusts by Act of a Party are subdivided into—

- (i.) Express Trusts.
- (ii.) Implied Trusts.

Express Trusts are further subdivided into—

- (a) Executed Trusts.
- (b) Executory Trusts.

Executory Trusts again are divided into—

- (i.) Trusts in Marriage Articles.
- (ii.) Trusts in Wills.

As to 2.—Trusts by Operation of Law are subdivided into—

- (i.) Resulting Trusts.
- (ii.) Constructive Trusts.

Resulting Trusts again are subdivided thus—

- (a) Legal Interest, but not the Equitable—
Disposed of—

- (i.) By Presumption of Law.
- (ii.) By Force of Words.

- (b) Upon Purchase in the Names of Third Persons—

- (i.) In the Name of a Stranger.
- (ii.) In the Name of a Child.

The learned writer elsewhere defines an Implied Trust as “*one declared by a party not directly but only by implication,*” while Trusts by Operation of Law “*are such as are not declared by a party*

at all, either directly or indirectly, but result from the effect of a rule of equity"; and divides them into (1) Resulting Trusts, as when an estate is devised to A. and his heirs upon trust to sell and pay the testator's debts, in which case the surplus of the beneficial interest is a resulting trust in favour of the testator's heir; and (2) Constructive Trusts, which are trusts the Court elicits by a construction put upon certain acts of parties, as when a tenant for life of leaseholds renews the lease on his own account, in which case the law gives the benefit of the renewed lease to those who were interested in the old lease. It seems clear, therefore, that if this division is adopted by the Courts the Act will apply, amongst other cases, to the following constructive trusts: namely—Where a person holds property on a precatory trust; where a person agrees for valuable consideration to settle or sell a specific estate; where property, whether real (*Dyer v. Dyer*, White & Tudor's L. C. 203) or personal (*Elrand v. Dyer*, 2 Ch. Ca. 36), has been conveyed to others than, or jointly with, the person who has paid the purchase-money. The actual operation of the Act in some of these cases will, however, be insignificant.

The following cases throw some light on the question:—

1. In *re Angelo* (5 De G. & Sm. 278) the vendor of shares in a joint stock bank has, after the contract, been held a trustee; and see also *Gardiner v. Cowles* (3 Ch. D. 304); *re Findlay* (32 Ch. D. 221 and 641); *re Bradshaw* (2 De G. M. & G. 950); *re Wood* (3 D. G. F. & J. 125); and *re Davis's Trusts* (L. R., 12 Eq. 214).

2. In cases relating to real estate it would appear that a vendor or his representative cannot be declared a trustee, unless the right to specific performance has been settled by a decree, for the reason that there might always be a question whether the contract could be enforced by a suit for specific performance, and it would be extremely inconvenient to declare the vendor to be a trustee upon a petition on which that point could not be decided. If the purchase-money is paid to the vendor in his lifetime, he then becomes a trustee of the legal estate (*re Wilkinson*, 12 W. R. 522; *re Jones*, 1888, W. N. 217; *re Carpenter*, Kay 418; *re Colling*, 32 Ch. D. 333; *re Burt*, 9 Ha. 289; *re Taylor*, 1886, W. N. 5; *re Faulder*, 1866, W. N. 83; *re Lowry's Will*, L. R., 15 Eq. 78; *Morgan v. Swansea Urban Sanitary Authority*, 9 Ch. D. 582; *re Badcock*, 2 W. R. 386; *Dewar v. Maitland*, L. R., 2 Eq. 834; *re Martin's Trusts*, 34 Ch. D. 619; and *re Pagani's Trust*, 1892, 1 Ch. 236).

But Section 4 of The Conveyancing and Law of Property Act, 1881, renders this of little importance, as by it the personal representative of a deceased vendor can complete if the contract was enforceable at the death of the vendor (*Lysaght v. Edwards*, 2 Ch. D. 506).

3. The owner of copyholds covenanting to surrender, and declaring that in the meantime he will stand seised upon trust for the covenantee, is a trustee within the Act (*re* Collingwood's Trusts, 6 W. R. 536; *Steele v. Walter*, 28 Beav. 466; *re* Bradley's Settled Estates, 54 L. T., N. S., 43; *re* Wise, 5 De G. & Sm 415; and *re* Cumming, L. R., 5 Ch. 72).

4. An assignee in bankruptcy (*re* Joyce's Estate, L. R., 2 Eq. 576).

5. For the case of a mortgagee see *re* Crowe's Mortgage (L. R., 13 Eq. 26), and *London and County Banking Co. v. Goddard* (66 L. J., Ch. 261).

The responsibility of a trustee may be extended constructively by Courts of Equity to others who are not properly trustees, if they are found either making themselves trustees *de son tort* or actually participating in any fraudulent conduct of the trustee to the injury of the *cestui que trust*. But on the other hand strangers are not to be made constructive trustees merely because they act as the agents of trustees in transactions within their legal powers, of which perhaps a Court of Equity may disapprove, unless those agents receive and become chargeable with some part of the trust property, or unless they assist with knowledge in a dishonest and fraudulent design on the part of the trustees (*Barnes v. Addy*, 9 L. R., Ch. 244; *in re Barney*, *Barney v. Barney*, 1892, 2 Ch. 265; and *Mara v. Browne*, 1896, 1 Ch. 199).

As to a solicitor employed by trustees constituting himself by his acts a constructive trustee see *Mara v. Browne ante*, and *Brinsden v. Williams* (1894, 3 Ch. 185).

As to how far the executors of a last surviving trustee are trustees of the trust instrument see *in re Waidanis*, *Rivers v. Waidanis* (1908, 1 Ch. 123); *in re Routledge's Trusts*, *Routledge v. Saul* (1909, 1 Ch. 280); *in re Crunden & Meux's Contract* (1909, 1 Ch. 690).

51. The Acts mentioned in the Schedule to Repeal. this Act are hereby repealed, except as to Scotland, to the extent mentioned in the third column of that Schedule.

Section 51.—Section 38 of The Interpretation Act, 1889 (52 & 53 Vict. c. 63), is as follows:—“Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted” (see note to Section 46).

Extent of
Act.

52. This Act does not extend to Scotland.

Section 52.—This Act applies to Ireland, but in several particulars was imperfect in its application to that country, and had to be amended by The Trustee Act, 1893, Amendment Act, 1894 (see p. 256, *post*).

Short title.

53. This Act may be cited as The Trustee Act, 1893.

Section 53.—By The Interpretation Act, 1889, Section 35 (1), it is enacted. “In any Act, instrument, or document an Act may be cited by reference to the short title (if any) of the Act, either with or without a reference to the chapter, or by reference to the regnal year in which the Act was passed, and where there are more Statutes or Sessions than one in the same regnal year, by reference to the Statute or the Session, as the case may require, and where there are more chapters than one, by reference to the chapter, and any enactment may be cited by reference to the section or sub-section of the Act in which the enactment is contained.”

Commence-
ment.

54. This Act shall come into operation on the *First day of January, One thousand eight hundred and ninety-four.*

Section 54.—This section must, of course, be read subject to the express declaration in certain of the sections that the Act applies to deeds, transactions, &c., which have taken place before its passing.

The following is a list of the sections which alter the date so fixed:—

By Section 4, Sections 1 to 3 inclusive, relating to investments, are to apply *as well to trusts created before as to trusts created after the passing of this Act.*

By Section 5 a trustee “*shall be deemed to have always had power to invest*” as therein mentioned.

The following sub-sections also alter the date:—Section 8 (4), Section 9 (2), Section 10 (6), Section 11 (4), Section 12 (5), Section 13 (3), Section 14 (4), Section 17 (4), Section 18 (3), Section 19 (3), Section 20 (2), Section 21 (4), Section 22 (2), Section 45 (2), and Section 47 (3).

As a general rule an Act of Parliament comes into effect at the beginning of the day on which it received the Royal Assent, unless there are words (as in the sections above mentioned of The Trustee Act, 1893) expressly altering the time of commencement.

SCHEDULE.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
36 Geo. III. c. 52	The Legacy Duty Act, 1796.	Section thirty-two.
9 & 10 Vict. c. 101	The Public Money Drainage Act, 1846.	Section thirty-seven.
10 & 11 Vict. c. 32	The Landed Property Improvement (Ireland) Act, 1847.	Section fifty-three.
10 & 11 Vict. c. 96	An Act for better securing trust funds, and for the relief of trustees.	The whole Act.
11 & 12 Vict. c. 68	An Act for extending to Ireland an Act passed in the last Session of Parliament, entitled "An Act for better securing trust funds, and for the relief of trustees"	The whole Act.
12 & 13 Vict. c. 74	An Act for the further relief of trustees.	The whole Act.
13 & 14 Vict. c. 60	The Trustee Act, 1850	Sections seven to nineteen, twenty-two to twenty-five, twenty-nine, thirty-two to thirty-six, forty-six, forty-seven, forty-nine, fifty-four, and fifty-five; also the residue of the Act except so far as relates to the Court exercising jurisdiction in lunacy in Ireland.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
15 & 16 Vict. c. 55	The Trustee Act, 1852	Sections one to five, eight, and nine; also the residue of the Act except so far as relates to the Court exercising jurisdiction in lunacy in Ireland.
17 & 18 Vict. c. 82	The Court of Chancery of Lancaster Act, 1854.	Section eleven.
18 & 19 Vict. c. 91	The Merchant Shipping Act Amendment Act, 1855.	Section ten, except so far as relates to the Court exercising jurisdiction in lunacy in Ireland.
20 & 21 Vict. c. 60	The Irish Bankrupt and Insolvent Act, 1857.	Section three hundred and twenty-two.
22 & 23 Vict. c. 35	The Law of Property Amendment Act, 1859.	Sections twenty-six, thirty, and thirty-one.
23 & 24 Vict. c. 38	The Law of Property Amendment Act, 1860.	Section nine.
25 & 26 Vict. c. 108	An Act to confirm certain sales, exchanges, partitions, and enfranchisements by trustees and others.	The whole Act.
26 & 27 Vict. c. 73	An Act to give further facilities to the holders of Indian stock.	Section four.
27 & 28 Vict. c. 114	The Improvement of Land Act, 1864.	Section sixty, so far as it relates to trustees; and Section sixty-one.
28 & 29 Vict. c. 78	The Mortgage Debenture Act, 1865.	Section forty.
31 & 32 Vict. c. 40	The Partition Act, 1868.	Section seven.
33 & 34 Vict. c. 71	The National Debt Act, 1870.	Section twenty-nine.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
34 & 35 Vict. c. 27	The Debenture Stock Act, 1871.	The whole Act.
37 & 38 Vict. c. 78	The Vendor and Purchaser Act, 1874.	Sections three and six.
38 & 39 Vict. c. 83	The Local Loans Act, 1875.	Sections twenty-one and twenty-seven.
40 & 41 Vict. c. 59	The Colonial Stock Act, 1877.	Section twelve.
43 & 44 Vict. c. 8	The Isle of Man Loans Act, 1880.	Section seven, so far as it relates to trustees.
44 & 45 Vict. c. 41	The Conveyancing and Law of Property Act, 1881.	Sections thirty-one to thirty-eight.
45 & 46 Vict. c. 39	The Conveyancing Act, 1882.	Section five.
46 & 47 Vict. c. 52	The Bankruptcy Act, 1883.	Section one hundred and forty-seven.
51 & 52 Vict. c. 59	The Trustee Act, 1888	The whole Act, except Sections one and eight.
52 & 53 Vict. c. 32	The Trust Investment Act, 1889.	The whole Act, except Sections one and seven.
52 & 53 Vict. c. 47	The Palatine Court of Durham Act, 1889.	Section eight.
53 & 54 Vict. c. 5	The Lunacy Act, 1890	Section one hundred and forty.
53 & 54 Vict. c. 69	The Settled Land Act, 1890.	Section seventeen.
55 & 56 Vict. c. 13	The Conveyancing and Law of Property Act, 1892.	Section six.

THE TRUSTEE ACT, 1893, AMENDMENT ACT, 1894.

(57 & 58 VICTORIA, CHAPTER 10.)

An Act to Amend The Trustee Act, 1893. [18th June, 1894.]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Amend-
ment of
56 & 57 Vict.
c. 53, s. 30.

1. In Section 30 of The Trustee Act, 1893, the words "as heir, or under the will of a deceased person for payment of whose debts the judgment was given or order made," shall be repealed.

Extension
to Ireland
of 56 & 57
Vict. c. 53,
s. 41.

2. The powers conferred on the High Court in England by Section 41 of The Trustee Act, 1893, to make vesting orders as to all land and personal estate in Her Majesty's dominions, except Scotland, are hereby also given to and may be exercised by the High Court in Ireland.

Amend-
ment of
56 & 57 Vict.
c. 53, s. 41.

3. In Section 44 of The Trustee Act, 1893, after the word "trustee," in the first two places where it occurs, shall be inserted the words "or other person."

4. A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the instrument of trust or by the general law.

Liability of trustee in case of change of character of investment.

5. This Act may be cited as “The Trustee Act, 1893, Amendment Act, 1894.”

Short title.

Sections 1, 2, and 3 of this Act are referred to under the appropriate sections of The Trustee Act, 1893.

Section 4.—*In re Chapman, Cocks v. Chapman* (1896, 1 Ch. 323), decides that Section 4 of the above Act has no retrospective operation so as to exempt the trustees of a will from liability for a breach of trust committed *before the passing* of the Act (the 18th June, 1894) in *retaining* an investment of their testator not authorised by the will or by the general law.

In that case testator directed the trust moneys under his will to be invested upon “good real or Government security.” His residuary estate consisted of mortgages on land. Owing to agricultural depression the trustees decided not to call in the mortgages, and the question raised was whether they were liable for any breach of trust by reason of their having continued to hold the outstanding mortgage securities as investments. The testator’s death occurred in 1880. The question was raised by summons on the 7th August, 1893, the Chief Clerk’s certificate being made on the 3rd July, 1895, after the passing of the above Act.

Kekewich, J., considered that the investments ought to have been called in by July, 1881, twelve months from the testator’s death, and decided that, on the principle laid down by Lord Hatherley, in *Pardo v. Bingham* (L. R., 4 Ch. 735), “that except there be a clear indication either from the subject-matter or from the wording of a Statute” a Statute is not to be construed retrospectively, the section was not retrospective, and that the trustees therefore could not be relieved under it from the breach of trust for which they were liable when it came into effect. In the judgment in this case it is pointed out that the section differs materially in language from that of Sub-section 3 of Section 8 of the Act of 1888 and Sections 8 and 9 of the Act of 1893, as it uses the word “liable” instead of the word “chargeable.”

The decision of Kekewich, J., was, it is true, reversed by the Court of Appeal (1896, 2 Ch. 763) on the facts, the Court being of opinion that under the circumstances the trustees, having acted

honestly and prudently, were not liable as for a breach of trust, but no reference was made to the section under consideration or to Mr. Justice Kekewich's decision as to its effect.

The case in the Court of Appeal is one of great importance to executors and trustees, as the Court decided that where a will authorises investments on mortgage of real estate, and part of the testator's estate at his death consists of mortgages of freehold farms, there is no rule that his executors and trustees are under an absolute duty, without exercising any judgment of their own in the matter, to call in the securities within twelve months from the death (unless realisation is required for payment of debts, funeral and testamentary expenses, and legacies), even though some of the securities may be of a risky nature, as where owing to agricultural depression they have apparently become insufficient to satisfy the mortgage debts.

It was also laid down that there is no rule that trustees retaining a security authorised by their trusts are liable to make good all loss sustained through the fall in value of the security, provided that in acting they have acted honestly and prudently in the belief that they have taken the best course for all parties interested in the trust estate. To render trustees liable in such a case wilful default, including want of ordinary prudence, must be proved.

A trustee who is honest and reasonably competent is not to be held responsible for a mere error in judgment when the question he has to consider is whether a security of a class authorised but depreciated in value should be retained or realised, provided he acts with reasonable care, prudence, and circumspection (*in re Chapman, Cocks v. Chapman*, 1896, 2 Ch. 778).

In the case of *re Grindey, Clews v. Grindey* (1898, 2 Ch. 593), a testator by his will gave real and personal estate to his executors and trustees upon trust to maintain the same in the like mode of investment as at the time of his death until one of his sons should attain the age of twenty-four. The estate comprised a debt of £166 due upon a promissory note payable on demand. The executors believing the debtor to be a man of good credit neither called in nor applied to the Court for directions as to this debt. The debtor died insolvent eighteen months after the death of the testator, and the estate suffered a loss. It was held that, having regard to the terms of the will, the executors might reasonably have thought that they were not bound either to call in the debt or to apply for directions, and that under the circumstances, having acted honestly and reasonably, they ought to be relieved, under Section 3 of The Judicial Trustees Act, 1896 (*post*, p. 266), from their breach of trust and from personal liability for the same.

Incidentally, *in re Chapman, Cocks v. Chapman*, also decides that an originating summons may be an "action or proceeding

against a trustee" within the meaning of Sub-section 1 (a) and (b) of Section 8 of The Trustee Act, 1888 (see *ante*, p. 6).

The case of *re Roth, Goldberger v. Roth* (1896, W. N. 16, No. 15), is an authority that a power in a will to postpone the conversion of securities directed to be sold does not authorise postponement for a definite time, and cannot be exercised by a majority of trustees.

In *re Smith, Arnold v. Smith* (1896, 1 Ch. 171), it was held that a power to postpone the sale of all or any part of a residue devised and bequeathed on trust to sell, and particularly to sell his business of a pawnbroker with all convenient speed, does not give power to carry on the business for an indefinite time.

As to the construction of an express authority given by a testator to his trustees to retain any part of his estate "in its present form of investment" see *in re Smith, Smith v. Lewis* (1902, 2 Ch. 667). In that case the testator authorised his trustees to retain any part of his estate "in its present form of investment." At the time of his death he held 750 fully paid ordinary shares of £5 each in a limited company which had no preference shares. These shares were of great value, and the trustees retained 520 of them. The company was subsequently reconstructed; the old company was wound up voluntarily and a new company formed with the same name. All the assets of the old company were transferred to the new company; the new company carried on the business as before, and allotted to each member of the old company, in exchange for every fully paid share in the old company, one ordinary share of £5 and one preference share of £5 in the new company credited as fully paid. No alternative terms were offered by which shareholders might have received payment in cash instead of in shares. The trustees accepted the shares allotted to them in exchange for their shares in the old company. The preference shares in the new company were at the date of the hearing within the investment clause in the will. The question was whether the trustees had power to retain the ordinary shares in the new company, and it was held that the shares in the new company were within the words "in its present state of investment" and that the trustees were justified in retaining them. But see *in re Anson's Settlement, Earl of Lovelace v. Anson* (1907, 2 Ch. 424), in which Kekewich, J., expressed a doubt as to the soundness of the decision in *in re Smith, Smith v. Lewis*.

As to the conditions under which the Court has sanctioned the taking up or retaining by trustees of shares or debentures not authorised either by the Act or by the terms of the trust instrument as investments see *in re New*; *in re Leavers*; *in re Morley* (1901, 2 Ch. 534); *in re Morrison, Morrison v. Morrison* (1901, 1 Ch. 701); and *in re Tollemache* (1903, 1 Ch. 457, 955).

Where a will contains no trust for conversion, and the life tenant of residue (or of a legacy) is given the entire income thereof, he is entitled to the income of unauthorised permanent securities retained (and appropriated) by the trustees under a power of retainer (and appropriation) (*in re* Wilson, *Moore v. Wilson*, 1907, 1 Ch. 394). And where by a will real and personal property are directed to be sold and converted and the proceeds held in trust for one for life and then for others, and without any impropriety the sale of the real estate is postponed, the tenant for life of the proceeds is entitled to the rents and profits of the real estate until sale (*in re* Oliver, *Wilson v. Oliver*, 1908, 2 Ch. 74).

So where a will contains no trust for conversion, and the tenant for life of the residue is given the entire income thereof, he is entitled to the income of unauthorised securities retained by the trustees under a power of retainer whether the securities are of a permanent or of a wasting nature (*in re* Nicholson, *Eade v. Nicholson*, 1909, 2 Ch. 111).

It is conceived that the real effect of a power to retain investments is to add the securities retained to the list of authorised investments (*in re* Bates, *Hodgson v. Bates*, 1907, 1 Ch. 22, at pp. 27 and 28).

THE JUDICIAL TRUSTEES ACT, 1896.

(59 & 60 VICTORIA, CHAPTER 35.)

**An Act to provide for the Appointment of Judicial Trustees
and otherwise to Amend the Law respecting the
Administration of Trusts and the Liability of Trustees.**

[14th August, 1896.]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) Where application is made to the Court by or on behalf of the person creating or intending to create a trust, or by or on behalf of a trustee or beneficiary, the Court may, in its discretion, appoint a person (in this Act called a judicial trustee) to be a trustee of that trust, either jointly with any other person or as sole trustee, and, if sufficient cause is shown, in place of all or any existing trustees.

Power of
Court on
application
to appoint
judicial
trustees.

(2) The administration of the property of a deceased person, whether a testator or intestate, shall be a trust, and the executor or administrator a trustee, within the meaning of this Act.

(3) Any fit and proper person nominated for the purpose in the application may be appointed a judicial trustee, and, in the absence of such nomination, or if the Court is not satisfied of

the fitness of a person so nominated, an official of the Court may be appointed, and in any case a judicial trustee shall be subject to the control and supervision of the Court as an officer thereof.

(4) The Court may, either on request or without request, give to a judicial trustee any general or special directions in regard to the trust or the administration thereof.

(5) There may be paid to a judicial trustee out of the trust property such remuneration, not exceeding the prescribed limits, as the Court may assign in each case, subject to any Rules under this Act respecting the application of such remuneration where the judicial trustee is an official of the Court, and the remuneration so assigned to any judicial trustee shall, save as the Court may for special reasons otherwise order, cover all his work and personal outlay.

(6) Once in every year the accounts of every trust of which a judicial trustee has been appointed shall be audited, and a report thereon made to the Court by the prescribed persons, and, in any case where the Court shall so direct, an inquiry into the administration by a judicial trustee of any trust, or into any dealing or transaction of a judicial trustee, shall be made in the prescribed manner.

Section 1.—This section introduces into English law for the first time a judicial trustee for *private trust funds*. The appointment is to be made by “the Court.” By Section 2 “the Court” having jurisdiction in such matters is to be the High Court, which, for the purposes of this Act, is the Chancery Division of the High Court, the Palatine Court, and any County Court to the Judge of

which jurisdiction is assigned under Sub-section 1 (6) of Section 4 of the Act. For forms of Orders see *Seton on Decrees*, 6th ed., Vol. II., p. 1273, and also Rules 2, 30, and 31, Appendix I., Part C., *post*. The Rules prescribe the form of application (see Rule 2 *et seq.*, Appendix I., Part C., *post*):—

- (a) If not made in a pending cause or matter, it is to be made by originating summons.
- (b) If made in a pending cause or matter, it is to be made as part of the relief claimed, or by summons in the cause or matter.

An official of the Court cannot be appointed or act as judicial trustee for any persons in their capacity as members or debenture holders of or being in any other relation to any incorporated or unincorporated company or any club (see Rule 26, Appendix I., Part C., *post*).

Sub-section 1.—The applicant may be—

- (1) The person (a) who has created the trust, or (b) intends to create one.
- (2) Any trustee of a trust already created.
- (3) Any beneficiary under an existing trust.

The Act does not apply to any charity, whether subject to or exempted from The Charitable Trusts Acts, 1853 to 1894 (see Section 6, Sub-section 2). The jurisdiction is discretionary, not *ex debito justitiæ*.

In re Ratchiff (1898, 2 Ch. 352) decides that, in accordance with the express wording of Section 1, Sub-section (1), the appointment of a judicial trustee is absolutely discretionary.

In re Chisholm (43 Sol. J. 43) the Court refused to appoint a judicial trustee, as there were others willing to act.

Application may be made to have a judicial trustee appointed, either—

- (i.) As sole trustee.
- (ii.) Jointly with any other person (who presumably may be a continuing trustee).

It was laid down, however, in the case of *re Martin* (1900, W. N. 129), that the union of a judicial trustee and a private or gratuitous trustee is undesirable, and the Court will not sanction it.

- (iii.) In place of existing trustees, or any of them.

But in this last-mentioned case “sufficient cause” must be shown. A “sufficient cause” will probably be held to be such a cause as is now necessary to enable the Court to remove a trustee from a trust.

Sub-section 2.—An executor or administrator is a trustee within the meaning of the Act; and the administration of the property of the deceased person is a trust. So, apparently, after an executor or administrator is constituted, it would be possible to have a “judicial trustee” appointed to administer the estate instead of the executor and administrator. It has been so decided in *re Ratcliff* (1898, 2 Ch. 352). The Rules (No. 25) provide that any person who is an executor or administrator may be appointed a judicial executor or administrator for the purpose of the collection and distribution of the estate of a deceased person in the same manner and subject to the same provisions as a person may be appointed a judicial trustee of a trust.

Sub-section 3.—“*Any fit and proper person.*”—See as to the meaning of these words the notes to Sections 10 and 25 of The Trustee Act, 1893, and also Rule 5 of the Rules issued under this Act, Appendix I., Part C.

The Court may appoint either the person nominated or an official of the Court. In either case the judicial trustee is subject to the control and supervision of the Court. In *Douglas v. Bolam* (1900, 2 Ch. 749), upon the application for the appointment of a judicial trustee in the place of a retiring judicial trustee, it was held that, if the Court is not satisfied of the fitness of the person nominated by the applicant, there is jurisdiction to appoint a person suggested by the retiring trustee as his successor, and that the Court is not in such a case bound by this sub-section to appoint only an official trustee.

By the Rules issued under the Act it is provided that the Court shall not be precluded by any existing practice as to the appointment of trustees from appointing any person to be a judicial trustee by reason of that person being a beneficiary, or relation or husband or wife of a beneficiary, or a solicitor to the trust or to the trustee or any beneficiary, or a married woman, or standing in any special position with regard to the trust. A person may be appointed a judicial trustee of a trust even if he is already a trustee of the trust (see Rule 5, Appendix I., Part C.).

Where an official of the Court is appointed judicial trustee, the official solicitor of the Court is to be so appointed, unless for special reasons the Court directs that some other official of the Court shall be so appointed (Rule 7).

The Public Trustee, whose office has been established since the passing of this Act (see The Public Trustee Act, 1906, 6 Edw. VII. c. 55, and the notes thereon, *post*, p. 292), may act as a judicial trustee.

A judicial trustee, if not an official of the Court, must, unless the Court make dispensation, give security to the Court for the due application of the trust property (see Rule 9, Appendix I., Part C., *post*). But the Public Trustee, where appointed a judicial

trustee, will in no case, it is conceived, be liable to give security, since by Sub-section 4 of Section 11 of The Public Trustee Act, 1906 (see *post*, p. 328), it is especially provided that where any security would be required from a private person upon his appointment to act in any capacity the Public Trustee, if he is appointed to act in such capacity, shall not be required to give such security, but shall be subject to the same liabilities and duties as if he had given such security.

By Sub-section 1 of Section 7 of The Public Trustee Act, 1906 (see *post*, p. 324), it is provided that the Consolidated Fund of the United Kingdom shall be liable to make good all sums required to discharge any liability which the Public Trustee, if he were a private trustee, would be personally liable to discharge, except where the liability is one to which neither the Public Trustee nor any of his officers has in any way contributed, and which neither he nor any of his officers could, by the exercise of reasonable diligence, have averted; and the protection afforded to beneficiaries by that sub-section would, it is apprehended, extend to liabilities incurred by the Public Trustee where acting as a judicial trustee, since "private trustee" is defined by Section 15 of The Public Trustee Act, 1906 (see *post*, p. 335), as meaning a trustee other than the Public Trustee.

Sub-section 4.—The Court, in addition to appointing a judicial trustee, may give any general or special directions in regard to the trust or the administration thereof. It can do this of its own mere motion, or on request by the applicant or any party to the application. This power would apparently enable the Court on appointing a judicial trustee to decide any question of administration which may have arisen in connection with the trust. It also enables the Court to lay down general or special instructions for administering the trust irrespective of whether any question of difficulty has arisen or not.

The Rules provide in a comprehensive way for the administration of a trust by a judicial trustee and for the account and audit of the funds. The direction of the Court can be obtained at any time by a judicial trustee as to the way he is to act in the administration of the trust (see Rules 12 and 28).

Sub-section 5.—This is a comprehensive sub-section, permitting payment to be made to a judicial trustee for his services. The amount of the remuneration is not to exceed "the prescribed limits." "Prescribed" by Section 5 means prescribed by the Rules under the Act. For the "limits" which have been so prescribed see Rules 17 to 19, Appendix I., Part C.

The remuneration must include all work done and personal outlay. The principle of payment to a private trustee for his services was not unknown to the law as it stood previous to this

Act. The creator of a trust could, if he thought fit, authorise the payment of remuneration; and the Court itself will under certain circumstances permit or even order it (see *in re Freeman's Settlement Trusts*, 37 Ch. D. 148, and *Marshall v. Holloway*, 2 Sw. 432, at p. 453). But without a statutory authorisation, or authority from the creator of the trust, a trustee has no right to exact or charge any remuneration or bonus for services in connection with the trust (*Barrett v. Hartley*, L. R., 2 Eq. 789).

Sub-section 6.—The audit here provided for would apply to trusts of which one only of the trustees is a judicial trustee, as well as to cases where there is more than one judicial trustee.

A report has also to be made by “the prescribed persons” (see Rule 14, Appendix I., Part C.).

Ample control is retained over the judicial trustee, as the Court can, under this section, direct an inquiry into the administration of the trust, or into any dealing or transaction of the judicial trustee.

Court to
exercise
jurisdiction.

2. The jurisdiction of the Court under this Act may be exercised by the High Court, and as respects trusts within its jurisdiction by a Palatine Court, and (subject to the prescribed definition of the jurisdiction) by any County Court Judge to whom such jurisdiction may be assigned under this Act.

Section 2.—The Courts having jurisdiction under this Act are the High Court, the Palatine Courts of Lancaster and Durham, and any County Court to which jurisdiction is given by the Rules under the Act (see *post*, Section 4, Sub-section 6; see also Rules 29, 30, and 31, Appendix I., Part C.).

Jurisdiction
of Court in
cases of
breach of
trust.

3. (1) If it appears to the Court that a trustee, whether appointed under this Act or not, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the passing of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the

Court in the matter in which he committed such breach, then the Court may relieve the trustee either wholly or partly from personal liability for the same.

(2) This section shall come into operation at the passing of this Act.

Section 3.—This section introduces a novel principle into the law of trusts. It is founded on the report of the Select Committee of the House of Commons which sat in 1895, and (*inter alia*) made the following remarks on the question of relief of trustees:—"In a recent decision in the House of Lords (*Speight v. Gaunt*) a step was taken in the direction of alleviating the position of a trustee, and the overwhelming weight of opinion among the witnesses who gave evidence before your Committee was in favour of a still further alleviation. Your Committee recommend that the Court be empowered to relieve any trustee from personal liability when satisfied that he has acted honestly and reasonably with the intention of carrying out the terms of the trust, and ought fairly to be excused for having acted without the direction of the Court."

Speight v. Gaunt (9 A. C. 1) simply decided that a trustee was justified in following the ordinary course of business when investing trust moneys, and that he consequently was not liable for a loss incurred by the dishonesty of an agent properly employed. The section of this Act goes a step further, and permits the Court wholly or partially to relieve a trustee who has acted honestly and reasonably, even though not in accordance with ordinary business caution, or according to the usual routine.

Sub-section 1.—It will be seen that this section has adopted the very words of the Committee's report, "honestly and reasonably." Two defences will therefore be open to a trustee charged with breach of trust (in addition of course to the defence that the act complained of is in fact not a breach of trust):—

- (i.) That the liability is barred by the Statute of Limitations.
- (ii.) That he has acted honestly and reasonably, and ought fairly to be excused for the breach.

It will be noticed that the defence is available by *any* trustee, *whether appointed under this Act or not*, and that the protection afforded applies whether the breach was committed before or after the passing of the Act.

The onus of proving that he has acted honestly and reasonably lies on the trustee (*re Stuart, Smith v. Stuart*, 1897, W. N. 84, No. 4; 1897, 2 Ch. 583), and where the breach of trust consists in investing

upon insufficient securities the requirements of Section 8 of The Trustee Act, 1893, constitute a standard by which reasonable conduct is to be judged, although non-compliance with those requirements is not necessarily a fatal obstacle to an application for relief.

The Act need not be specially pleaded to enable a trustee to avail himself of its shelter (*Singlehurst v. Tapscott Steamship Co., Limited*, 1899, W. N. 133).

Perrins v. Bellamy (1898, 2 Ch. 521; affirmed 1899, 1 Ch. 797) contains a luminous exposition of the section, and incidentally, as to whether or not the trustee must, in addition to showing that he has acted "honestly and reasonably," show that he "ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach." Mr. Justice Kekewich, in the Court below, in his judgment in that case expressed it as his opinion that "in general in the absence of special circumstances a trustee who has acted 'reasonably' ought to be relieved . . . and it is not incumbent on the Court to consider whether he ought 'fairly' to be excused, unless there is evidence of a special character showing that the provisions of the section ought not to be applied in his favour" (*Perrins v. Bellamy*, 1898, 2 Ch. 528). The soundness of that opinion is, however, open to doubt, for in the *National Trustees Company of Australasia, Limited*, and the *General Finance Company of Australasia, Limited* (in the Privy Council, 1905, A. C. 373), in which trustees sought relief from liability for a breach of trust under the provisions of Section 3 of The Victorian Trusts Act, 1901, which corresponds with this section, it was held that on the true construction of the section there in question a trustee does not entitle himself to relief by proving that he has acted reasonably and honestly. He must show that under all the circumstances he ought fairly to be excused for his breach of trust.

The condition which seems to be implied in the words "for omitting to obtain the directions of the Court" is somewhat ambiguous. The transaction which, in any case of a trustee's liability, is alleged as the breach cannot be any more or even less a breach whether the Court be applied to or not. If it were a breach he ought not to have committed it. The words would seem to suggest that where a trustee is contemplating, either *ex mero motu* or on the request or at the instigation of a beneficiary, what may be breach of trust, he may hold the matter in suspense, and say "we will get the opinion of the Court." If this be so the resort to the Court will be more frequent than hitherto. Probably this is the meaning, for earlier in the section occur the words "is or may be personally liable," suggesting that a trustee may get plenary or partial absolution in anticipation as it were. See remarks of Kekewich, J., in *Perrins*

v. Bellamy (1898, 2 Ch. 528), and of Lindley, L. J. (1898, 1 Ch. 800 and 801).

The power of relief given to the Court is wholly discretionary: "The Court *may relieve* the trustee either *wholly or partly*."

Where trustees erroneously assuming that they had a power of sale sold settled leaseholds, and thereby diminished the income of the plaintiff, who as tenant for life of a moiety was entitled to rents and profits in specie; but the sale would have been a proper one if the trustees had in fact possessed a power of sale. It was held that as the trustees had acted honestly and reasonably they were entitled under this section to relief (*Perrins v. Bellamy*, 1898, 2 Ch. 521; affirmed 1899, 1 Ch. 797).

In *re Grindey*, *Clews v. Grindey* (1898, 2 Ch. 593), a testator by his will gave his real and personal estate to his executors and trustees with power to retain existing investments. A debtor to the estate became insolvent after the lapse of a considerable time from the testator's death, but the trustees had not then called in the debt. It was held that they were entitled to relief under the Act.

Chapman v. Browne (1902, 1 Ch. 785) was a case where the trustees were held not entitled to relief under the Act. In that case the trustees, without obtaining legal advice, sold out investments and invested money on a puisne mortgage in Ireland, which was held under the circumstances to be a breach of trust. Romer, J., held that the trustee had acted "honestly," but not "reasonably," as he had not "considered the question whether the security he took was one which in its nature it was prudent and right for him as a trustee to take."

In *re Lord de Clifford's Estate*, *Lord de Clifford v. Quilter* (1900, 2 Ch. 707), a trustee had paid moneys belonging to a trust estate to the solicitor of the trust for payments—so the solicitor alleged—in the administration. It was held that under the special circumstances the executors had acted honestly and reasonably, and ought fairly to be excused for making the payments in reliance on their solicitor's statements, and ought to be relieved from personal liability. Farwell J., in giving judgment, said, "There is nothing analogous in this to the principle underlying the relief against forfeiture at Common Law, and there is in fact no principle which can serve as a guide. I must bear in mind that on the one hand that this relief is granted at the expense of the *cestui que trust*, and on the other that the trustee assumes an onerous post without reward, and the real difficulty is to say what is fair and right as between the beneficiary who entrusts his money to the trustee and the trustee who acts gratuitously on his behalf." Relying on *Bacon v. Bacon* (5 Ves. 331) the Judge came to the conclusion that the trustees were justified in relying on the statement of their solicitor as

to the amounts required for the administration, and in paying such sums over to him. See, however, *Williams v. Biron* (18 T. L. R. 172).

In *re Kay, Morley v. Kay* (1897, 2 Ch. 518), shows that the Act will apply to the case of an executor who has committed a *devastavit*. The executor had paid legatees when, as it subsequently turned out, the estate was insolvent.

In *re Stuart, Smith v. Stuart* (1897, 2 Ch. 583), a trustee acted on (1) a valuation which stated merely the amount for which the property was a good security, without stating the value of the property, and (2) advanced more than two thirds of the value stated in the valuation. In each case the valuer was employed by a solicitor who acted for the mortgagor also, and the trustee did not allege that he reasonably believed the valuer to be employed independently of any owner of the property. The trustee was held not entitled to relief.

In *in re Dive, Dive v. Roebuck* (1909, 1 Ch. 328), the trustee of a will was directed to invest the trust funds "in his own name or under his legal control" in (amongst other modes of investment) freehold, copyhold, leasehold, or chattel real securities. He invested a sum of £2000 (part of the trust funds) on a contributory mortgage of certain leasehold flats held under underleases at substantial rents. The security was introduced by a surveyor to the trustee's solicitor, who recommended it to the trustee, and suggested the same surveyor as a suitable person to value the property on the trustee's behalf. The trustee appointed the surveyor, and it was arranged that he should be paid a fee only in the event of the mortgage going through. The surveyor made his report, from which it appeared that the property was of a speculative character, but the surveyor nevertheless advised that it formed a good security for the sum proposed to be advanced by the trustee and his co-mortgagee. The trustee, relying on the advice of his solicitor and on the report, advanced the £2000. The mortgagor subsequently became insolvent, and the trustee and his co-mortgagee were compelled to sell the property under their power of sale, with the result that the greater part of the £2000 advanced by the trustee was lost. In the action, which was against the trustee for breach of trust, it was held that the investment was improper and a breach of trust; that in making it the trustee, although he had acted honestly, had not acted "reasonably," and that he was therefore not entitled to be relieved under this section.

In a Scots case (*Hutton v. Arman and Others*, 1898, A. C. 289) it was decided that an Accountant of Court, who fills a similar position to that of a Master in Chancery under The Judicial Trustee Rules, 1897, has no power to approve of an improper investment, and that the annual audit of the Accountant of Court did not exempt a *curator bonis* from liability.

In *re Turner, Barker v. Ivimey* (1897, 1 Ch. 536), Byrne, J., held that the power to relieve a trustee from personal liability for a breach of trust, where he has acted honestly and reasonably, given by the above section, is meant to be acted on freely and fairly in the exercise of judicial discretion; but the Court must, before exercising the power, be satisfied by sufficient evidence that the trustee acted *reasonably as well as honestly*. No general rules or principles can be laid down as those to be acted upon in carrying out the section. Each case depends on its own circumstances (*re Stuart, Smith v. Stuart*, 1897, W. N. 84, No. 4).

The action was brought by the tenant for life and remainderman of a trust fund against the surviving trustee and the personal representatives of a deceased trustee to replace a trust fund which had been lost. The two trustees appointed by the testatrix were a solicitor and a linendraper. They invested the trust money on a mortgage, which was an improper investment, both as to its nature and as to its value; and the Court refused to excuse the linendraper, as it was not satisfied that he had acted with the care which he would probably have taken if the money had been his own, but found he had relied on the solicitor. The Court, following *Lockhart v. Reilly* (25 L. J., Ch. 697), ordered the solicitor to indemnify his co-trustee from the loss resulting from his negligence.

Where one of two trustees allowed his co-trustee, a solicitor, to pay part of the trust funds into his partnership account at a bank, who established a claim on the fund for moneys overdrawn by the firm, this conduct was held not "reasonable" within the meaning of the Act (*Wynne v. Tempest*, 1897, W. N. 43, No. 14; and 1897, 1 Ch. 110). As to mode of raising the defence see *re Stuart, Smith v. Stuart* (1897, W. N. 73, No. 9).

Trustees seeking relief under this section cannot be said to have acted reasonably if they neglect to do what a reasonable man would do in the prudent management of his own business (*per Parker, J.*, in *Shaw v. Cates*, 1909, 1 Ch. 389, at p. 405).

This section, it seems, does not apply to cases where the liability of the trustee is due to the default of an agent employed by him, even though due care is used in the choice of the agent (see *Davis v. Hutchings*, 1907, 1 Ch. 356, 365).

An executor who, acting honestly and in good faith, allows a claim against his testator's estate to be apprehended, he is considered as acting "reasonably," and would be entitled to relief under this section if the transaction was impugned by persons beneficially entitled under the will (see *in re Houghton, Hawley v. Blake*, 1904, 1 Ch. 622).

Sub-section 2.—This section came into operation on the 14th August, 1896.

Rules.

4. (1) Rules may be made for carrying into effect this Act, and especially—

- (1) For requiring judicial trustees, who are not officials of the Court, to give security for the due application of any trust property under their control :
- (2) Respecting the safety of the trust property, and the custody thereof :
- (3) Respecting the remuneration of judicial trustees and for fixing and regulating the fees to be taken under this Act so as to cover the expenses of the administration of this Act, and respecting the payment of such remuneration and fees out of the trust property, and, where the judicial trustee is an official of the Court, respecting the application of the remuneration and fees payable to him :
- (4) For dispensing with formal proof of facts in proper cases :
- (5) For facilitating the discharge by the Court of administrative duties under this Act without judicial proceedings, and otherwise regulating procedure under this Act and making it simple and inexpensive :
- (6) For assigning jurisdiction under this Act to County Court Judges and defining such jurisdiction :

- (7) Respecting the suspension or removal of any judicial trustee, and the succession of another person to the office of any judicial trustee who may cease to hold office, and the vesting in such person of any trust property :
- (8) Respecting the classes of trust in which officials of the Court are not to be judicial trustees, or are to be so temporarily or conditionally :
- (9) Respecting the procedure to be followed where the judicial trustee is executor or administrator :
- (10) For preventing the employment by judicial trustees of other persons at the expense of the trust, except in cases of strict necessity :
- (11) For the filing and auditing of the accounts of any trust of which a judicial trustee has been appointed.

(2) The Rules under this Act may be made by the Lord Chancellor, subject to the consent of the Treasury in matters relating to fees and to salaries and numbers of officers, and to the consent of the authority for making orders under The Solicitors Remuneration Act, 1881, in matters relating to the remuneration of solicitors. The Rules shall be laid before Parliament and have the same force as if enacted in this Act, provided that if, within thirty days after such Rules have been laid before either House of Parliament during

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c. 44.

which that House has sat, the House presents to Her Majesty an address against such Rules or any of them, such Rules or the Rule specified in the address shall thenceforward be of no effect.

Section 4.—For the Rules issued hereunder see *post*, Appendix I., Part C.

Definitions. **5.** In this Act—

The expression “official of the Court” means the holder of such paid office in or connected with the Court as may be prescribed.

The expression “prescribed” means prescribed by Rules under this Act.

Section 5.—The expression “*official of the Court*” occurs in Sub-sections 3 and 5 of Section 1, and also in Sub-section 1 (1), (3), and (8) of Section 4.

Short title,
extent,
and com-
mencement
of Act.

6. (1) This Act may be cited as “The Judicial Trustees Act, 1896.”

(2) This Act shall not extend to any charity, whether subject to or exempted from The Charitable Trusts Acts, 1853 to 1894.

(3) This Act shall not extend to Scotland or Ireland.

(4) This Act, except as by this Act otherwise provided, shall come into operation on the *First day of May, One thousand eight hundred and ninety-seven.*

Section 6, Sub-section 3.—Why Irish trustees should be exempted from this Act is not clear.

By Sub-section 4 of Section 51 of The Irish Land Act, 1903 (3 Edw. VII. c. 37) it is, however, enacted that "In the case of all proceedings in relation to any lands sold under the Land Purchase Acts, or any charges thereon, or any moneys realised thereby, if it appears to the Court that a trustee is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the passing of that Act, but has acted honestly and reasonably and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve the trustee, either wholly or partly, from personal liability for the same."

And where relief is sought under that sub-section, the cases before referred to in the notes to Section 3 of this Act (see *ante*, p. 266 *et seq.*) would, having regard to the similarity of the language used in both enactments be applicable.

As to the meaning of the expression "Land Purchase Acts" in The Irish Land Act, 1903, see Section 98 of that Act.

Sub-section 4.—Section 3 (as to a trustee being excused if he has acted honestly and reasonably) came into operation on the 14th August, 1896.

PART I.

OF

THE LAND TRANSFER ACT, 1897

(BEING THE SECTIONS RELATING TO THE ESTABLISHMENT OF A REAL REPRESENTATIVE).

**An Act to establish a Real Representative, and to amend
The Land Transfer Act, 1875. [6th August, 1897.]**

*This Act, by Section 25, came into operation on
1st January, 1898.*

WHEREAS it is expedient to establish a Real Representative, and to amend The Land Transfer Act, 1875, in this Act referred to as "the principal Act:"

38 & 39 Vict.
c. 87.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

Establishment of a Real Representative.

Devolution
of legal
interest in
real estate
on death.

1. (1) Where real estate is vested in any person without a right in any other person to take by survivorship it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal

representatives or representative from time to time as if it were a chattel real vesting in them or him.

(2) This section shall apply to any real estate over which a person executes by will a general power of appointment as if it were real estate vested in him.

(3) Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.

(4) The expression "real estate," in this Part of the Act, shall not be deemed to include land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant.

(5) This section applies only in cases of death after the commencement of this Act.

Section 1.—By this section a Real Representative is established. The real representative of a deceased person is his or her personal representative or representatives, who, by Section 24, Sub-section 2, are defined to be the executors or administrators of such person.

Where a testator dying subsequently to the Act coming into operation has appointed executors, his real estate vests in all the executors, and not only in those who prove the will or act in the administration of the real estate; and the executors who prove the will cannot convey the legal fee simple without the concurrence of their co-executor who has not proved the will, unless the latter has, by renunciation or otherwise, lost his right to a grant (*in re* Pawley and Provincial Bank, 1900, 1 Ch. 58, 64; and see 20 & 21 Vict. c. 77, s. 79, and 21 & 22 Vict. c. 95, s. 16).

But where the testator has by his will appointed special executors as to property situate in a foreign country, or in the colonies, and by the same will appointed other persons general executors of his will, his real estate in England will vest in

his general executors, and they can on sale make a good title without the concurrence of the special executors (*in re Cohen's Executors and the London County Council*, 1902, 1 Ch. 187).

The Act does not bind the Crown, and, therefore, the legal estate in escheated land does not, under this section, vest in the Solicitor to the Treasury as the Crown nominee. So where a widow died, after the commencement of the Act, without issue, a bastard, and intestate, entitled to both real and personal estate, a grant was made by the Court to the Solicitor to the Treasury of her personal estate only as before the Act (in the Goods of Hartley, 1899, P. 40).

The Act does not extend to the following real estate:—

1. Real estate vested jointly in the deceased with another person or persons. In such case, whether the estate be a beneficial one or held upon trust, it passes to the survivor or survivors by right of survivorship.
2. Land of copyhold tenure.
3. Land of customary freehold tenure (if an act or admission on the part of the lord is necessary to perfect the title of a purchaser from the customary tenant).
4. Trust or mortgage estates of which the deceased is solely seised. Such estates (other than copyhold estates) on his death devolve to his personal representative or representatives under Section 30 of The Conveyancing and Law of Property Act, 1881.

It is true that the Act now under consideration speaks generally of real estate vested in any person without a right in any other person to take by survivorship, but it does not expressly repeal the section of The Conveyancing and Law of Property Act, 1881, referred to, nor does it, it is submitted, do so by a necessary implication, since there is no actual repugnancy between the two Statutes: the object of both is to vest the real estate of a deceased person in his personal representatives. The law does not favour a repeal by implication unless the repugnancy be plain (*Foster's Case*, 11 R. 63). Even where two Acts of Parliament may be seemingly repugnant, if there be no clause of *non obstante* in the latter, they shall, if possible, have such construction, that the latter may not be a repeal of the former by implication (see *Dwarris and Amyott on the Statutes*, p. 533, and *Maxwell on the Interpretation of Statutes*, p. 214).

Where real estate is vested in two or more persons as tenants in common, and one of such persons dies, his share will vest under the Act in his personal representative.

The section applies to equitable as well as legal interests in real estate (*in re Somerville and Turner's Contract*, 1903, 2 Ch. 583, 587, 588). The marginal note goes only to the "devolution of legal

interest in real estate on death," but it is exceedingly doubtful whether the marginal notes to an Act of Parliament can be referred to for the purpose of its interpretation (see the remarks of Bramwell and Baggallay, L.JJ., in *Attorney-General v. Great Eastern Railway Co.*, 11 Ch. D. 460, 461, and the remarks of Jessel, M. R., in *Sutton v. Sutton*, 22 Ch. D. 511, 513), and it is, both from the title and wording of the section, clear that it was the intention of the Legislature to establish a real representative in whom all the real estate vested beneficially in persons dying after the commencement of the Act should vest (see the remarks of Lopes, L. J., in *Powell v. Kempton Park Racecourse Co.*, 1897, 2 Q. B. 265), and this intention would be largely defeated if the mere fact that the legal estate was outstanding would exclude a real estate from the purview of the Act.

The section too, applies to equitable interests in copyhold and customary estates, for such interests are not the subject of customary assurance, but pass by mere assignment without any act of the lord being necessary (*King v. King*, 3 P. Wms. 359, and *Macnamara v. Jones*, 1 Bro. C. C. 481), and their devolution to the real representative does not operate to deprive the lord of any fine, relief, or other profit (*in re Somerville and Turner's Contract*, ante).

A testamentary disposition of real estate to which the section relates is made unavailing to pass it; so that if a man devise his real estate to his executors, whom he appoints trustees, that devise is in effect nugatory, the land vesting by force of law in the personal representatives, irrespective of the devise.

Real estate over which a person executes by will a *general power* of appointment is, by virtue of this Act, to pass to the personal representative.

The operation of the section is, by Sub-section 5 of Section 1, confined to the deaths of persons taking place after the commencement of the Act (1st January, 1898).

It is to be noted that the Act contains no definition of "real estate."

The result of this enactment is to destroy, once and for all, one of the main distinctions which exist in English law between real and personal property, namely, that in the absence of a disposition by will or settlement such real property descends at the death of the owner to *the heir*. This ceased to be so on the 1st January, 1898. But where the ancestor dies intestate the heir still takes a beneficial interest, subject to administration under the Act.

Sub-section 3.—Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate (in the *Goods of Barnett*, 1898, P. 145).

This does not mean that probate of a will must be granted before a dealing with the realty can be made by the executors

nominated in the will. Probate is only proof of the title of executors; the title itself is derived from the will. It is probable, however, that after the 1st January, 1898, purchasers of realty will insist on probate of any will coming into effect after that date being granted, so as to complete the title to the land purchased by them.

The section, it is conceived, applies only to real estate of which the deceased person was at his death seised or entitled, either in possession or in reversion or remainder, for an estate of inheritance in fee simple or for an estate *pur autre vie*. In the case of a tenant for his own life his legal interest ceases, of course, at his death, and, in the case of an estate tail, although legally speaking it is an estate of inheritance, the estate would, it is apprehended, notwithstanding this section, pass to the heir in tail *per formam doni*.

Sub-section 4.—The concluding words of this sub-section apply to land of copyhold tenure as well as to customary freehold (*in re Somerville and Turner's Contract, ante*).

Provisions
as to
administra-
tion.

2. (1) Subject to the powers, rights, duties, and liabilities hereinafter mentioned, the personal representatives of a deceased person shall hold the real estate as trustees for the persons by law beneficially entitled thereto, and those persons shall have the same power of requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer of such personal estate.

(2) All enactments and rules of law relating to the effect of probate or letters of administration as respects chattels real, and as respects the dealing with chattels real before probate or administration, and as respects the payment of costs of administration and other matters in relation to the administration of personal estate, and the powers, rights, duties, and liabilities of personal representatives in respect of personal estate, shall apply to real estate so far as the

same are applicable, as if that real estate were a chattel real vesting in them or him, save that it shall not be lawful for some or one only of several joint personal representatives, without the authority of the Court, to sell or transfer real estate.

(3) In the administration of the assets of a person dying after the commencement of this Act, his real estate shall be administered in the same manner, subject to the same liabilities for debts, costs, and expenses, and with the same incidents, as if it were personal estate: provided that nothing herein contained shall alter or affect the order in which real and personal assets respectively are now applicable in or towards the payment of funeral and testamentary expenses, debts, or legacies, or the liability of real estate to be charged with the payment of legacies.

(4) Where a person dies possessed of real estate, the Court shall, in granting letters of administration, have regard to the rights and interests of persons interested in his real estate, and his heir at law, if not one of the next-of-kin, shall be equally entitled to the grant with the next-of-kin, and provision shall be made by Rules of Court for adapting the procedure and practice in the grant of letters of administration to the case of real estate.

Section 2, Sub-section 1.—Instead of real estate passing to a devisee it will, as above stated, now pass to the executor, and his assent to the devise will be necessary before it can vest in the devisee. This assent must not be given until the

executor is satisfied that there are sufficient assets to pay the debts of the deceased without having recourse to the real property specifically devised.

“*The personal representatives of a deceased person shall hold the real estate as trustees for the persons by law beneficially entitled thereto.*”—These words make the executor or administrator a statutory trustee of the real estate, and lead apparently to the result that the provisions of The Trustee Act, 1893, so far as they are applicable to the duties incident to the office of personal representative of a deceased person, apply to such personal representatives upon the death of the deceased, and all the provisions of that Act, including the power of appointment of new trustees, apply to them on the estate being cleared (see *in re Willey*, 1890, W. N. 1, and *Eaton v. Daines*, 1894, W. N. 32).

“*Those persons shall have the same power of requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer of such personal estate.*”—This, it is apprehended, does not mean that an actual deed of transfer from the personal representative to the person entitled to the realty is necessary, but only that the former’s assent is needed, except, perhaps, where there is an intestacy. Under Section 3, after the administrator has fully administered, the heir at law in the case of an intestacy could apparently require a conveyance of the property to himself, upon which—but not before—he could enter and enjoy it. In practice some sort of formal written assent will, no doubt, be resorted to in evidence of the assent, even in the case of a devisee (see Key & Elphinstone’s *Precedents in Conveyancing*, 7th ed., Vol. I., pp. 496 and 912).

In the case of registered land the assent must be in the prescribed form (see Sub-section 4 of Section 3).

Sub-section 2.—This sub-section is important, as it assimilates the rules of administration of realty to those applying in the administration of chattels real. It contains a statement of the “powers, rights, duties, and liabilities,” subject to which real estate is to be held in trust for those entitled to it.

One important exception is made in the application to real estate of the law as to chattels real, namely, that it shall not be lawful “for some or one only of several joint personal representatives, without the authority of the Court, to sell or transfer real estate.”

In respect of such real estate one executor or administrator will not, as is the case with regard to personalty, have power to sell or assign the property without the concurrence of the others, unless he obtain beforehand the consent of the Court.

As to the meaning of the expression “the Court” in this part of the Act see *post*, p. 288.

It would be superfluous here to recapitulate the rules of administration as to chattels real, which are now made applicable to realty.

Sub-section 3.—This sub-section preserves the existing law as to the order in which real and personal estate is respectively applicable in administration.

The Act does not confer any new right of retainer or priority in favour of the personal representative as against real assets, and such representative has, therefore, no right to retain, out of the proceeds of the sale of real estate vested in him under the Act, a debt due to him from his testator or intestate in preference to the other creditors (*in re Williams, Holder v. Williams*, 1904, 1 Ch. 52).

Nor has the Act made any difference to the settled practice of the Chancery Division, as laid down in the case of *re Middleton, Thompson v. Harris* (19 Ch. D. 552), that the costs of an administration action, so far only as they have been increased by the administration of real estate, are to be borne by the real estate, and has not the effect of causing the costs of an administration action to be borne proportionately to their respective values by the real and personal estate (*in re Jones, Elgood v. Jones*, 71 L. J., Ch. 6; 1902, 1 Ch. 92; and see *in re Betts, Doughty v. Walker*, 1907, 2 Ch. 149).

The costs of obtaining a grant of probate or of letters of administration are still to be borne by the personal estate (*ibid.*).

Where the executors of a testator who died after the Act came into operation applied by summons for the determination of the question whether under the terms of the will a certain piece of freehold land was included in a specific devise or belonged to the heir at law as undisposed of, the will containing no general devise of real estate, Kekewich, J., expressed the opinion that, though there was a good deal to be said in favour of the view that since this Act an executor occupies the position of a trustee of real estate, he was not prepared to hold that there was any alteration of the ordinary rule as to costs in the case of a conflict between devisees and an heir at law so as to make the rule as to costs applicable as if the summons had dealt with personal estate, and directed that the devisees, who had failed, should pay the costs of the heir at law. The executors' costs were directed to be taxed as between solicitor and client and charged on the property, with liberty to apply as to the same (*in re Peel, Woodcock v. Holroyd*, 1899, W. N. 208).

And in the case of *in re Betts, Doughty v. Walker* (1907, 2 Ch. 149), it was held by the same Judge that, although the effect of this Part of the Act had been to make the costs of administering real estate testamentary expenses, the ordinary practice of the Chancery Division (that the costs of administration,

so far as they have been increased by the administration of the real estate, shall be borne by that real estate) is nevertheless still applicable, and accordingly the costs of an inquiry as to the testatrix's heir at law, asked for in that case, must be borne by the realty, notwithstanding a general direction contained in the will that the testamentary expenses were to be paid out of the personalty.

Where the ordinary rule of the Chancery Division as to the costs of administering real and personal estate is applied, it is the practice of the Court to apportion these costs at the hearing (see *Patching v. Barnett*, 1907, 2 Ch. 154*n*; and the judgment of Kekewich, J., *in re Betts*, *Doughty v. Walker*, *ante*).

If a testator intends that the costs of administering his real estate shall be borne by his personal estate, the will must contain a specific direction to that effect. It is not sufficient that the testator has, by his will, directed that his testamentary expenses should be paid by his personal estate (see *in re Betts*, *Doughty v. Walker*, *ante*).

Prior to the passing of this Statute, an order of the Probate Division for payment of the costs of a suit touching the validity of a will out of the estate of the testator affected only the personal estate of the testator, but since the Act came into operation the Judge has, it seems, jurisdiction to deal with the realty as well as the personalty (*in re Prince*, *Godwin v. Prince*, 1898, 2 Ch. 228).

“*Testamentary Expenses.*”—As to what expenses are testamentary see *in re Prince*, *Godwin v. Prince* (1898, 2 Ch. 225); *re Clemow*, *Yeo v. Clemow* (1900, 2 Ch. 182); *in re Treasure*, *Wild v. Stanham* (69 L. J., Ch. 751); *re Sharman*, *Wright v. Sharman* (1901, 2 Ch. 288); and *in re Betts*, *Doughty v. Walker*, *ante*.

A direction to pay testamentary expenses extends to estate duty (*in re Fearnside*, *Baines v. Chadwick*, 1903, 1 Ch. 250, and *in re Treasure* and *in re Clemow*, *ante*).

The plaintiff's costs of an unsuccessful suit to impeach the validity of a will, though ordered by the Judge in the Probate Division to be paid out of the testator's estate, are not testamentary expenses (*in re Prince*, *Godwin v. Prince*, 1898, 2 Ch. 225).

Sub-section 4.—This sub-section apparently applies not only to administration in case of intestacy but also to administration *cum testamento annexo*. It is, therefore, conceived that in cases where administration *cum testamento annexo* is necessary, and the testator has given his residuary personal estate to one person and devised his real estate to another, the Court may in its discretion make the grant either jointly to the residuary legatee and the devisee of the real estate, or, having regard to the larger interest, solely to the residuary legatee or the devisee.

The sub-section also expressly places the heir at law on an equal footing with the next-of-kin where an intestate dies possessed of real estate and his heir at law is not one of his next-of-kin. In such a case it would seem that the Court has power to make the grant either to the heir at law and the next-of-kin jointly, or to make a selection amongst the heir at law and the next-of-kin, or to make separate grants in respect of the real and personal estate (see Comyn's Dig. Administrator B. 6; 3 Bac. Abr. 55; and *Fawtry v. Fawtry*, 1 Salk. 36), or if the personal estate is of merely nominal value to grant to the heir alone with the object of giving the management of the estate to the person who has the beneficial interest (see *Wetdrill v. Wright*, 2 Phillim. 248).

Where the title of the person applying under this sub-section for administration as heir at law is clear, and there is no personalty, a grant may be made to the applicant without notice to the next-of-kin; but where the title of the applicant is doubtful, or the amount of the personalty large as compared with the realty, notice should be given to the next-of-kin (in the Goods of Barnett, 1898, P. 145).

So in a case where a married woman who owned certain farms made a will by which she left her real estate to her husband for life, with remainder to her natural daughter absolutely, and all her personal estate to her husband, whom she appointed executor. Her natural daughter died in her lifetime. Her husband died without proving the will, and administration of his personal estate was granted to his sister as next of kin. It was not known who was the heir at law of the testatrix. The value of the real estate was £7,688, that of the personalty £45. It was held, on an application by the administratrix of the husband for a grant of administration of the real and personal estate of the testatrix, that, having regard to the provisions of this sub-section, the heir at law not having been cited a general grant ought not to be made, but that the applicant might take a grant *ad colligendum* which would enable her to let and manage the farms till the heir at law could be cited (in the Goods of Roberts, 1898, P. 149).

A husband is entitled *jure mariti* to take out administration to his wife—a right in no way affected by the Married Women's Property Act—where the wife dies without having made a testamentary disposition of her property (see *in re Lambert's Estate*, *Staunton v. Lambert*, 39 Ch. D. 626). Where a man dies intestate, leaving a widow, she is entitled to administration in preference to the next-of-kin, unless it can be shown by the next-of-kin that she is unfit, in which case the Court may pass her over (see *Lambell v. Lambell*, 3 Hagg. 568). The heir at law will now, however, it is conceived, in the case of an application for letters by a widow, have an equal right with the next-of-kin to contest her right to a grant on the ground of fitness. The Court has, it seems, in the

case of a similar application by a husband, power, should unfitness on his part be shown, to prefer the heir at law. Where a wife died intestate, leaving surviving her husband and a son by a former marriage, who was a minor and her heir at law, and it appeared that the husband was a dissipated man, who was mismanaging a public-house which was part of the estate, and of which he refused to give up possession, the Court acting under this subsection and Section 73 of the Court of Probate Act, 1857, granted administration of the estate to the guardian *ad litem* of the infant heir at law (in the Goods of Ardern, 1898, P. 147).

By an additional Rule and Order dated the 20th November, 1897, for the Registrars of the principal and district Registries, all rules, orders, and instructions, and the existing practice of the Court with respect to non-contentious business, are, so far as the circumstances of each case will allow, to be applicable to grants of probate and administration made under the authority of The Land Transfer Act, 1897.

Provision
for transfer
to heir or
devisee.

3. (1) At any time after the death of the owner of any land, his personal representatives may assent to any devise contained in his will, or may convey the land to any person entitled thereto as heir, devisee, or otherwise, and may make the assent or conveyance, either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent or conveyance, subject to a charge for all moneys (if any) which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before such assent or conveyance.

(2) At any time after the expiration of one year from the death of the owner of any land, if his personal representatives have failed on the request of the person entitled to the land to convey the land to that person, the Court

may, if it thinks fit, on the application of that person, and after notice to the personal representatives, order that the conveyance be made, or, in the case of registered land, that the person so entitled be registered as proprietor of the land, either solely or jointly with the personal representatives.

(3) Where the personal representatives of a deceased person are registered as proprietors of land on his death, a fee shall not be chargeable on any transfer of the land by them unless the transfer is for valuable consideration.

(4) The production of an assent in the prescribed form by the personal representatives of a deceased proprietor of registered land shall authorise the Registrar to register the person named in the assent as proprietor of the land.

Section 3, Sub-section 1.—This sub-section should be read in connection with Section 2. When the administration is complete, a mere assent by the executor will, in the case of a devise, vest the realty in the devisee, and the personal representative of a deceased owner of land is, under Sub-sections 1 and 2 of this section, entitled to assent to a devise of land contained in his will in preference to executing a conveyance to the devisee (*in re Pix, Plomley, v. Stileman*, 1901, W. N. 165). A devisee cannot require an assent to describe the land in more precise terms than those comprised in the will (*in re Pix, ante*). In the case of an intestacy, the heir at law is perhaps entitled to call upon the personal representative for a conveyance, though such conveyance can hardly be necessary. For Forms of Assent and Conveyance see Appendix II.

A conveyance will also be appropriate even in the case of a devisee where the personal representative exercises the power under this section of charging the land with the payment of a sum of money. The money so charged will no doubt be such sums, or part of such sums, as the personal representatives desire to raise in the due course of administration.

The charge provided for by Sub-section 1 does not extend to debts for which, prior to the commencement of the Act, the

personal representatives would not be liable as regards the personal estate, and therefore, where the personal representatives have given the usual statutory notices to creditors, the charge does not apply to debts of which they have no notice at the date of the conveyance to the devisees (see *in re Cary and Lott's Contract*, 1901, 2 Ch. 463).

"All liabilities of the personal representatives in respect of the land shall cease, &c."—It is apprehended that the meaning of these words is that on assent or conveyance subject to a charge for all moneys which the personal representatives are liable to pay out of the real assets in due course of administration, such representatives shall no longer be liable to be charged in respect of these assets, but the remedy of creditors shall be against the heir or devisee as the case may be.

Sub-section 2.—To bring the powers of this sub-section into operation there must be—

1. Lapse of the period of one year from the date of the death of the owner.
2. A request of the person entitled to the land addressed to the representative, and failure on his part to convey.

After these conditions have been fulfilled the Court can on application order conveyance to or registration of the applicant as owner.

The application should be by summons entitled "In the Matter of the Will, &c., and in the Matter of "The Land Transfer Act, 1897, Part I."

By Rule 299 of The Land Transfer Rules, 1903, it is provided that "All jurisdictions, powers, and duties by the Acts [The Land Transfer Acts, 1875 and 1897] expressed to be vested in the Court of Chancery, or in the Court, including the hearing of any appeal under Section 116 of the Act of 1875, shall until further order be assigned to and vested in and exercised and performed by the senior Judge for the time being of the Chancery Division of the High Court of Justice. In his absence, or on his request, another Judge of that Division—and during vacations any Judge of the High Court acting as Vacation Judge—may act for him." The exclusive jurisdiction vested in the senior Judge of the Chancery Division by that Rule applies, however, only to Part II. of this Act (see *in re Walbech*, 1904, W. N.; p. 204), "the Court" in this Part of the Act meaning the Chancery Division exercising its ordinary jurisdiction in the administration of estates.

Appropriation of land in satisfaction of legacy or share in estate.

4. (1) The personal representatives of a deceased person may, in the absence of any express provision to the contrary contained in

the will of such deceased person, with the consent of the person entitled to any legacy given by the deceased person or to a share in his residuary estate, or, if the person entitled is a lunatic or an infant, with the consent of his committee, trustee, or guardian, appropriate any part of the residuary estate of the deceased in or towards satisfaction of that legacy or share, and may for that purpose value in accordance with the prescribed provisions the whole or any part of the property of the deceased person in such manner as they think fit. Provided that before any such appropriation is effectual, notice of such intended appropriation shall be given to all persons interested in the residuary estate, any of whom may thereupon within the prescribed time apply to the Court, and such valuation and appropriation shall be conclusive, save as otherwise directed by the Court.

(2) Where any property is so appropriated a conveyance thereof by the personal representatives to the person to whom it is appropriated shall not, by reason only that the property so conveyed is accepted by the person to whom it is conveyed in or towards the satisfaction of a legacy or a share in residuary estate, be liable to any higher stamp duty than that payable on a transfer of personal property for a like purpose.

(3) In the case of registered land, the production of the prescribed evidence of an appropriation under this section shall authorise

the Registrar to register the person to whom the property is appropriated as proprietor of the land.

Section 4, Sub-section 1.—This section gives the personal representatives power to appropriate the residuary estate (either realty or personalty) in satisfaction of a legacy or share of a residue (see *in re Beverley, Watson v. Watson*, 1901, 1 Ch. 681). In such a case the property must be valued “in accordance with the prescribed provisions.”

Notice of any appropriation must be given to all persons interested, any of whom can apply to the Court (by summons it is presumed) with reference to the valuation. The Rules to be issued will doubtless deal with the mode of application.

This sub-section, however, it is conceived, gives, in the case of a mere pecuniary legacy payable out of personal estate, no right to the legatee to payment out of residuary real estate in the event of the personal estate being insufficient to meet his legacy, but simply enables the personal representative, where a legacy is payable out of the proceeds of the conversion of residuary real and personal estate, to appropriate in specie under the conditions laid down by the sub-section.

Long before the passing of the Act it had been held by Courts of Equity that an executor or trustee had power *virtute officii* to appropriate specific investments at a proper value in satisfaction of a share in a residuary trust fund without the assent of or notice to the persons entitled to the other shares (*in re Lepine*, 1892, 1 Ch. 210; *re Richardson*, 1896, 1 Ch. 516; and *re Nickels, Nickels v. Nickels*, 1898, 1 Ch. 630).

Executors and trustees under a will which contains a trust for sale and conversion have power to appropriate any specific part of the residuary estate towards satisfaction of a legacy or share of the residue upon the principle that under the trust for sale power to sell the particular asset to the legatee, and to set off the purchase-money against the legacy. And the doctrine is not confined to pure personal estate, but extends to chattels real, and, probably, to real estate which is subject to a trust for sale and conversion (see *in re Beverley, Watson v. Watson*, 1901, 1 Ch. 681).

The doctrine, moreover, extends probably to cases where, although there is no express trust for sale and conversion, the executor would be bound to turn assets of the testator into money and apply it to the legacy in the ordinary course of administration apart from any trust for sale and conversion (see the judgment of Buckley, J., in the case of *in re Beverley, Watson v. Watson*, at p. 686).

The power of executors with a trust for sale and conversion to appropriate upon the principle before adverted to is not affected by this section (see *in re Beverley, Watson v. Watson, ante*).

But, save where there is a trust for sale and conversion, or there are circumstances which render it incumbent on the executor to realise assets for the purpose of paying legacies, the result of this section, it is apprehended, is to abrogate previously existing rules of equity (if any) with regard to appropriation, since it requires that before an appropriation is to be effectual notice of the intention to make such appropriation must be given to all persons interested in the residuary estate, who, if dissatisfied, are to be at liberty to apply to the Court within a time to be prescribed, and that the valuation of the specific part to be appropriated is to be made in accordance with the prescribed provisions.

The prescribed provisions are those that can be made under Section 22, Sub-section 6 (*i*), of the Act.

Twelve years have elapsed since the Act came into operation, but no Rules dealing with the section have as yet been issued, so that it is at present impossible to make an appropriation under it. The want of these Rules is not only causing grave inconvenience to the public, but will probably give rise to serious doubts and difficulties as to any appropriations which may have been made since the Act came into operation.

5. Nothing in this part of this Act shall affect Liability
for duty. any duty payable in respect of real estate or impose on real estate any other duty than is now payable in respect thereof.

THE
PUBLIC TRUSTEE ACT, 1906.

(6 EDWARD VII., CHAPTER 55.)

An Act to provide for the Appointment of a Public Trustee and to Amend the Law relating to the Administration of Trusts. [21st December, 1906.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

ESTABLISHMENT OF PUBLIC TRUSTEE.

Office of
Public
Trustee.

1. (1) There shall be established the office of Public Trustee.

(2) The Public Trustee shall be a corporation sole under that name, with perpetual succession and an official seal, and may sue and be sued under the above name like any other corporation sole, but any instruments sealed by him shall not, by reason of his using a seal, be rendered liable to a higher stamp duty than if he were an individual.

Sub-section 1.—By Section 14 of the Act it is directed that the Lord Chancellor shall, with the concurrence of the Treasury, make Rules for carrying into effect the objects of the Act and for, amongst other purposes, establishing the office of Public Trustee and prescribing the trusts or duties he is authorised to

accept or undertake, and establishing and regulating any branch office. And in accordance with that direction Rules known as "The Public Trustee Rules, 1907," have been made (see *post*, Appendix I., Part D., where the full text of these Rules is given). By such Rules the office of Public Trustee has been established, and provision made that the central office of the Public Trustee shall be in London, and for the establishment of branch offices from time to time, as may be prescribed by the Lord Chancellor, and for the appointment of Deputy Public Trustees at any branch offices so established, who are to be officers of the Public Trustee, and to have the powers and perform the duties assigned to them by or under the Rules (see Rules 33 and 34, *post*, Appendix I., Part D.).

By Sub-sections 1 and 4 of Section 8 of the Act it is provided that the appointment of a fit person to the office of Public Trustee shall be vested in the Lord Chancellor, and that the Public Trustee, if so directed by the Lord Chancellor, with the concurrence of the Treasury, shall maintain offices in London and elsewhere. And in pursuance of the power so vested in him the Lord Chancellor has appointed Mr. Charles John Stewart to be Public Trustee, with a central office at 3 and 4 Clement's Inn, Strand, London, W.C. No branch offices have as yet been established.

Sub-section 2.—"The Public Trustee shall be a corporation sole under that name, with perpetual succession and an official seal."—A corporation sole is the embodiment of an office which is held by single individuals in succession, and continuity of office is the chief characteristic of sole corporateness.

As to the continuity, apart from custom or statute, of a corporation sole with respect to succession to property see *Fulwood's Case* (4 Rep. 64 *b*); *Hawley v. Knight* (14 Q. B. 240); *Power v. Banks* (1901, 2 Ch., p. 495); and *Kydd on Corporations*, Vol. I., pp. 76 and 77.

Strictly, every corporation sole should have and use a corporate seal.

A corporation sole may, by parol, issue directions and do other similar acts necessary for carrying out the purposes of his office, and need not, as a rule, contract under seal, but he cannot in general divest himself of any interest in lands or hereditaments save by deed.

The Rules (see Rule 25. *post*. Appendix I., Part D.) specifically provide that no transfer by the Public Trustee of any securities or assurances by him of any land forming part of a trust property shall be made except under the hand and official seal of the Public Trustee, or under the hand and seal of an officer of the Public Trustee authorised in writing by him to act in that behalf generally or in any particular case, and any

such transfer or assurance by an officer so authorised is to have the same effect as if the same were made by the Public Trustee under his hand and official seal.

A corporation sole may in legal proceedings appear in person, but a corporation aggregate can only appear by solicitor appointed under seal (see *re* London County Council and London Tramways Arbitration, 13 Times L. R. 254), for such a body is invisible, existing only in intendment and contemplation of law (see Blackstone's *Commentaries*, Vol. I., p. 476).

The Public Trustee for the time being has by License dated the 1st day of January, 1908, been empowered to acquire and hold in mortmain lands in the trusts of which he is concerned.

"*But any instruments sealed by him shall not, by reason of his using a seal, be rendered liable to a higher stamp duty than if he were an individual.*"—As the affixing by a corporation of the corporate seal to a written instrument in some cases amounts in law to delivery, questions might, but for this provision, have arisen as to whether instruments sealed by the Public Trustee, although not intended to operate as deeds, were not technically deeds, and therefore only admissible in evidence if properly stamped.

POWERS AND DUTIES OF PUBLIC TRUSTEE.

General
powers and
duties of
Public
Trustee.

2. (1) Subject to and in accordance with the provisions of this Act and Rules made thereunder, the Public Trustee may, if he thinks fit—

- (a) Act in the administration of estates of small value.
- (b) Act as custodian trustee.
- (c) Act as an ordinary trustee.
- (d) Be appointed to be a judicial trustee.
- (e) Be appointed to be the administrator of the property of a convict under The Forfeiture Act, 1870.

(2) Subject to the provisions of this Act, and to the Rules made thereunder, the Public Trustee may act either alone or jointly with any person or body of persons in any capacity to which he may be appointed in pursuance of this Act, and

shall have all the same powers, duties, and liabilities, and be entitled to the same rights and immunities and be subject to the control and orders of the Court as a private trustee acting in the same capacity.

(3) The Public Trustee may decline, either absolutely or except on the prescribed conditions, to accept any trust, but he shall not decline to accept any trust on the ground only of the small value of the trust property.

(4) The Public Trustee shall not accept any trust which involves the management or carrying on of any business, except in the cases in which he may be authorised to do so by Rules made under this Act, nor any trust under a deed of arrangement for the benefit of creditors, nor the administration of any estate known or believed by him to be insolvent.

(5) The Public Trustee shall not accept any trust exclusively for religious or charitable purposes, and nothing in this Act contained, or in the Rules to be made under the powers in this Act contained, shall abridge or affect the powers or duties of the official trustee of charity lands or official trustees of charitable funds.

Section 2, Sub-section 1.—“*Rules made thereunder.*”—These Rules are set out in Appendix I., Part D., *post*.

“*The Public Trustee may if he thinks fit, &c.*”—The Public Trustee has an absolute discretion whether he shall accept any trust, except so far as that discretion is limited by Sub-sections 3, 4, and 5, which provide that—

- (a) He shall not decline to accept any trust on the ground *only* of the small value of the trust property;

- (b) He shall not accept any trust which involves the management or carrying on of any business except in cases in which he may be authorised to do so by the Rules; nor
- (c) Any trust under a deed of arrangement for the benefit of creditors; nor
- (d) The administration of any estate *known* or *believed* by him to be insolvent; nor
- (e) Any trust exclusively for religious or charitable purposes; and by Rule 7 (1), which provides that he shall not accept—
- (f) The trusts of any instrument made solely by way of security for money.

As to the cases in which the Public Trustee is authorised by the Rules to accept a trust which involves the management or carrying on of a business see the notes to Sub-section 4, *post*.

Taking the Public Trustee's powers *seriatim*, he may, if he thinks fit—

- (a) Act in the administration of *estates* of SMALL value.

As to the administration of small estates by the Public Trustee see Section 3 of the Act, *post*, in which section the expression "small value" is explained.

- (b) Act as Custodian Trustee.

As to the office of custodian trustee see Section 4 of the Act, *post*.

- (c) Act as an Ordinary Trustee.

As to the appointment of the Public Trustee to act as trustee in private trusts, or as executor or administrator, see Section 5 of the Act, *post*.

- (d) Be appointed to be a Judicial Trustee.

As to judicial trustees and their appointment see The Judicial Trustees Act, 1896, and the notes on the several sections thereof, *ante*.

The administration of the property of a deceased person, whether a testator or intestate, is a trust; and the executor or administrator a trustee, within the meaning of that Act.

The appointment of a judicial trustee is made by "the Court" The Court having jurisdiction in such matters is the Chancery Division of the High Court, the Palatine Courts of Lancaster and Durham, and any County Court to the Judge of which jurisdiction is assigned under Rule 31 of the Rules made under Sub-section 1 (6) of Section 4 of The Judicial Trustees Act, 1896 (see *ante*, p. 272).

Application may be made to have a judicial trustee appointed as sole trustee, or jointly with any other person, or in the place of existing trustees or any of them; and Sub-section 2 of this

section provides that the Public Trustee may act either alone, or jointly, with any person or body of persons in any capacity to which he may be appointed in pursuance of the Act.

The union of a judicial trustee with a private trustee is, however, considered by the Court as undesirable (see *re Martin*, 1900, W. N. 125); and where it is sought to have a judicial trustee appointed in the place of existing trustees sufficient cause must be shown.

Under The Judicial Trustees Act, 1896, the person to be appointed as a judicial trustee may be either any fit and proper person nominated for the purpose in the application for the appointment, or, in the absence of such nomination, or if the Court is not satisfied of the fitness of a person so nominated, an official of the Court: that is to say, a person holding any paid office in or connected with the Court (see Section 1, Sub-section 3, and Section 5 of The Judicial Trustees Act, 1896, *ante*, pp. 261 and 274; and see also Rule 7 (5) of the Rules made under that Act, Appendix 1., Part C., *post*).

By Rule 26 of the Rules made under The Judicial Trustees Act, 1896, an official of the Court cannot be appointed or act as judicial trustee for any persons in their capacity as members or debenture holders of, or being in any other relation to, any incorporated or unincorporated company or any club. That Rule would not, it is apprehended, apply to the Public Trustee; but that official, it must be borne in mind, is absolutely debarred from accepting the trusts of any instrument made solely by way of security for money, and his power to accept a trust which involves the management or carrying on of a business is a strictly limited one (see the notes to Sub-section 4, *post*).

A judicial trustee, whether an official of the Court or not, is subject to the control and supervision of the Court as an officer thereof. And the Court, either on request or without request, may, on appointing a judicial trustee, give any general or special directions in regard to the administration of the trusts (see Sub-sections 3 and 4 of Section 1 of The Judicial Trustees Act, 1896, *ante*, pp. 261 and 262).

The Court on appointing a judicial trustee may assign to him such remuneration, to be paid out of the trust property, as it may think fit, and may from time to time alter the amount of such remuneration. The remuneration assigned by the Court covers all the work and personal outlay, unless the Court otherwise directs, for it has power to make special allowances to judicial trustees in respect of certain matters (see Sub-section 5 of Section 1 of The Judicial Trustees Act, *ante*, p. 272, and Rules 17, 18, and 19 of the Rules made thereunder, *post*, Appendix I., Part C). By Rule 18, where an official of the Court is appointed to be a judicial trustee, any remuneration, allowances, or other payments payable to him are to be paid, accounted for, and applied in such manner as the Treasury directs.

However, under Section 9 of this Act, fees are to be charged in respect of the duties of the Public Trustee, and any expenses which might be retained or paid out of the trust property, if the Public Trustee were a private trustee, are to be so retained or paid, and the fees are to be retained or paid in like manner (see Sub-sections 1 and 2). It is conceived, therefore, that where the Public Trustee is appointed as a judicial trustee the section will apply, and that no order or direction of the Court as to remuneration or allowances will be necessary.

The accounts of every trust of which a judicial trustee is appointed must, under Sub-section 6 of Section 1 of The Judicial Trustees Act, 1896, be audited once in every year and a report thereon sent to the Court. And where the Public Trustee is appointed to act as a judicial trustee the accounts of the trust will also be liable to be audited and the securities representing the trust estate must be verified from time to time to the satisfaction of the Controller and Auditor-General (see Rule 23, Appendix I., Part. D., *post*).

And a judicial trustee, if not an official of the Court, must, unless the Court make dispensation, give security for the due application of the trust property (see Rule 9 of the Rules under The Judicial Trustees Act, 1896). But the Public Trustee when appointed a judicial trustee will in no case, it is conceived, be liable to give security, since by Sub-section 4 of Section 11 of this Act it is specially provided that where any security would be required from a private person upon his appointment to act in any capacity the Public Trustee, if he is appointed to act in such capacity, shall not be required to give such security, but shall be subject to the same liabilities and duties as if he had given such security.

Where the Public Trustee is appointed as a judicial trustee the beneficiaries will have as a guarantee for his responsibility the Consolidated Fund of the United Kingdom (see Section 7, *post*).

- (e) Be appointed to be the administrator of the property of a convict under The Forfeiture Act, 1870.

By The Forfeiture Act, 1870 (33 & 34 Vict. c. 23), it is enacted that, after the passing of that Act (4th July, 1870), no confession, verdict, inquest, conviction, or judgment of or for any treason, or felony, or *felo de se*, shall cause any attainder or corruption of blood, or any forfeiture or escheat, provided that nothing in that Act shall affect the law of forfeiture consequent upon outlawry. By Section 9 the Crown is empowered to appoint an administrator of the convict's property, and the Act makes provision for the vesting of the convict's property in the administrator for all the convict's estate and interest therein, and also makes provisions as to the mode in which such property is to be applied.

By Section 6 of The Forfeiture Act, 1870, the expression "convict," as used in the Act, is to be deemed to mean any person

against whom, after the passing of the Act, judgment of death or penal servitude shall have been pronounced or recorded upon any charge of treason or felony.

The application for the appointment of an administrator of the property of a convict must be made to the Home Office, and may be made by any person interested.

The appointment is revocable, and upon the administrator dying, or his appointment being revoked, a new administrator may be appointed, who will be the successor in law of the former administrator, and all property vested in, and all powers given to, the former administrator will devolve upon and vest in the new administrator, and the new administrator is bound by all the acts of the former administrator.

Sub-section 2.—A corporation, although it cannot be a grantee to uses, may be a trustee, and our Courts of Equity have always enforced and executed the trusts on which corporations have held property, whether lay or ecclesiastical (see *Attorney-General v. St John's Hospital, Bedford*, 2 De G. J. & S. 621, 635).

But until the passing of *The Bodies Corporate (Joint Tenancy) Act, 1899* (62 & 63 Vict. c. 20), there was a difficulty in a natural person being trustee jointly with a corporation, as a corporation and a natural person could not hold property as joint tenants, but only as tenants in common (see *Co. Litt. 190 a*; *Wm. Saunders* (ed. 1871), Vol. II., p. 716 (note 1); *Law Guarantee and Trust Society v. Bank of England*, 24 Q. B. D. 406). The Act referred to, however, provides that a body corporate shall be capable of acquiring and holding any real or personal property in joint tenancy in the same manner as if it were an individual; and that where a body corporate and an individual or two or more bodies corporate become entitled to any such property under circumstances, or by virtue of any instrument which would, if the body corporate had been an individual, have created a joint tenancy, they shall be entitled to the property as joint tenants.

The appointment of a corporation to act jointly with a natural person as trustees is now good even where made under a power of appointment contained in a trust instrument (see *in re Thompson's Settlement Trusts, Thompson v. Alexander*, 1905, 1 Ch. 229).

As the Public Trustee is to have all the same powers, duties, and liabilities, and to be entitled to the same rights and immunities, and be subject to the control and orders of the Court, as a private trustee acting in the same capacity, it is apprehended that he will, where a breach of trust is alleged against him, but he has acted honestly and reasonably in the matter, be entitled to apply to the Court under Section 3 of *The Judicial Trustees Act, 1896*, to be relieved from liability for such breach.

A "private trustee" is defined by the Act (Section 15, *post*) as meaning a trustee other than the Public Trustee.

Where the liability of the Public Trustee is one to which neither he nor any of his officers has in any way contributed, and which neither he nor any of his officers could by the exercise of reasonable diligence have averted, he will not be, nor will the Consolidated Fund be, subject to any liability (see Section 7, Sub-section 1, *post*).

The question of whether "reasonable diligence" has been exercised will be one for the Court in each case, and must depend upon the circumstances and evidence.

The Court, no doubt, will in cases of emergency or necessity have the same jurisdiction to permit the Public Trustee, in administering a trust, to go beyond the mere terms of the instrument creating such trust, as it would have in the case of a private trustee (see *in re New*, 1901, 2 Ch. 534; *in re Tollemache*, 1903, 1 Ch. 457; affirmed at p. 955).

It must be borne in mind that not only is the Public Trustee subject to the control and orders of the Court as a private trustee, but any person aggrieved by any act or omission or decision of his in relation to any trust may apply to the Court, and the Court may make such order in the matter as the Court thinks just (see Section 10, *post*, p. 327).

Sub-section 3.—The Public Trustee apparently will have a discretion as to whether he will act in any of the capacities mentioned in Sub-section 1, and he may decline, either absolutely or, except on the conditions for the time being prescribed by Rules under the Act (see Section 15, *post*, p. 335), to accept any trust. The only limit to his power of declining a trust being that he must not decline on the ground only of the *small value* of the trust property, as to which see Sub-section 3 of Section 2, *ante*.

As to the conditions prescribed by the Rules in some cases as to the acceptance of a trust by the Public Trustee see note to Sub-section 4, *post*, and Rule 8, Appendix I., Part D.

Sub-section 4.—"Except in the cases in which he may be authorised to do so by Rules, &c."—It is provided by Rule 8 (Appendix I., Part D., *post*) that the Public Trustee may if he thinks fit—

- (1) Act as *custodian trustee* of a trust which involves the management or carrying on of any business, but upon the conditions that (a) he shall not act in the management or carrying on of such business, and (b) he shall not hold any property of such a nature as will expose the holder thereof to any liability except under exceptional circumstances, and when he is satisfied that he is fully indemnified or secured against loss; and
- (2) Accept as *ordinary trustee* under exceptional circumstances a trust which involves the management or carrying on of any business, but upon the conditions that except with

the consent of the Treasury he shall only carry on the same (a) for a short time not exceeding eighteen months, and (b) with a view to sale, disposition, or winding up, and (c) if satisfied that the same can be carried on without risk of loss.

It will be observed that the Rule draws a distinction between cases in which the Public Trustee is asked to accept a trust as *custodian trustee*, and those in which he is asked to accept as *ordinary trustee*. In the former class of cases the length of time for which the business is to be carried on is immaterial, whilst in the latter the business, except with the consent of the Treasury, can only be carried on by the Public Trustee for a short period not exceeding eighteen months, and with a view to sale, disposition, or winding up.

It apparently rests with the Public Trustee to decide what are *exceptional circumstances*.

Where a trust accepted by the Public Trustee as ordinary trustee comprises a business which it is essential should be sold as a going concern, and it is found impossible to effect a sale within the period allowed by the Rule, the consent of the Treasury to an extension of time could no doubt be obtained on terms similar to those under which the Court will give further time for the sale of a business directed to be sold for the purposes of administration.

Sub-section 5.—As to the official trustee of charity lands and the official trustees of charitable funds see Sections 15 and 18 of The Charitable Trusts Amendment Act, 1855 (18 & 19 Vict. c. 124), and Section 4 of The Charitable Trusts Act, 1887 (50 & 51 Vict. c. 49).

(1) *In the Administration of Small Estates.*

3. (1) Any person who in the opinion of the Public Trustee would be entitled to apply to the Court for an order for the administration by the Court of an estate, the gross capital value whereof is proved to the satisfaction of the Public Trustee to be less than one thousand pounds, may apply to the Public Trustee to administer the estate, and, where any such application is made and it appears to the Public

Adminis-
tration of
small
estates.

Trustee that the persons beneficially entitled are persons of small means, the Public Trustee shall administer the estate, unless he sees good reason for refusing to do so.

(2) On the Public Trustee undertaking, by declaration in writing signed and sealed by him, to administer the estate, the trust property other than stock shall, by virtue of this Act, vest in him, and the right to transfer or call for the transfer of any stock forming part of the estate shall also vest in him, in like manner as if vesting orders had been made for the purpose by the High Court under The Trustee Act, 1893, and that Act shall apply accordingly. As from such vesting any trustee entitled under the trust to administer the estate shall be discharged from all liability attaching to the administration, except in respect of past acts :

Provided that—

- (a) The Public Trustee shall not exercise the right of himself transferring the stock without the leave of the Court; and
- (b) This sub-section shall not apply to any copyhold land forming part of the estate, but the Public Trustee shall, as respects such land, have the like powers as if he had been appointed by the Court under Section Thirty-three of The Trustee Act, 1893, to convey the land, and Section Thirty-four of that Act shall apply accordingly.

(3) For the purposes of the administration the Public Trustee may exercise such of the administrative powers and authorities of the High Court as may be conferred on him by Rules under this Act, subject to such conditions as may be imposed by the Rules.

(4) Rules shall be made under this Act for enabling the Public Trustee to take the opinion of the High Court on any question arising in the course of any administration without judicial proceedings, and otherwise for making the procedure under this section simple and inexpensive.

(5) Where proceedings have been instituted in any Court for the administration of an estate, and by reason of the small value of the estate it appears to the Court that the estate can be more economically administered by the Public Trustee than by the Court, or that for any other reason it is expedient that the estate should be administered by the Public Trustee instead of the Court, the Court may order that the estate shall be administered by the Public Trustee, and thereupon (subject to any directions by the Court) this section shall apply as if the administration of the estate had been undertaken by the Public Trustee in pursuance of this section.

Section 3.—The provisions of this section will, no doubt, prove very advantageous to poor persons beneficially interested in small estates.

An estate to be a small one within the meaning of the section must be one that can be proved to the satisfaction of the Public Trustee to be of a less gross capital value than £1000. To obtain an undertaking by the Public Trustee to administer such an

estate, it will have to be shown that the persons beneficially entitled are persons of small means (see Sub-section 1).

The section, it is apprehended, will enable the Public Trustee, when the Act comes into operation, to undertake not only the administration of the estates of deceased persons, whether dying testate or intestate, but also the administration of trusts established by written instrument where the trust estate falls within the limit imposed as to value (see Rule 15 [2]).

The Public Trustee will have power to undertake the administration of a small estate on the application of any person who would be entitled to apply to the Court for an order for the administration of such estate. His consent to do so must be by a declaration in writing signed and sealed by him (see Sub-section 2, *ante*).

Generally, the persons entitled to apply to the Court for an order for the administration of the estate of a deceased person are any person interested therein or in the proceeds thereof as legatee, devisee, next-of-kin, or heir, any creditor of the deceased, and the executors or administrators of the deceased, or any of such executors or administrators, and the persons entitled to apply to the Court for the administration of a trust are any of the persons beneficially interested thereunder, or the trustees or any of them.

The application to the Public Trustee to administer must be made in writing addressed to the Public Trustee at his office in London, or any branch office for the time being in existence, and may be left at or sent by post to any such office as aforesaid (see Rule 14 (1) and Rule 11 (1), Appendix I., Part D., *post*).

Upon receiving the application the Public Trustee will require to be supplied with such evidence as to the value of the estate and the circumstances of the persons beneficially entitled, and such other information relating thereto as he may consider it desirable to obtain in the particular case (see Rule 14 (2), Appendix I., Part D., *post*).

If it is not proved to the satisfaction of the Public Trustee that the gross capital value of the estate is less than £1000, or if it does not appear to him that the persons beneficially entitled are persons of small means, or if he sees any other good reason for refusing the application, he will refuse the same, and will forthwith give notice to the applicant of such refusal (see Rule 16 [1]).

But if the Public Trustee is satisfied that the estate is one which he has power under the section to administer and he is willing to undertake administration, he will make a declaration in writing, signed and sealed by him, undertaking to administer the estate (see Sub-section 2 of this section and Rule 15 [2]), and will take such other steps as may be necessary to enable him to administer the estate; and any person having the custody of the probate or letters of administration or other document relating to the estate must, upon the request in writing of the Public Trustee, deliver the same to him or as he shall direct.

Upon the acceptance of an application the Public Trustee will consider and determine whether the estate shall be administered from his Central Office or from a Branch Office, and will give directions accordingly, but any such direction may at any time be rescinded or varied by him at his discretion.

A refusal by the Public Trustee to administer an estate under the power conferred by the section will not prevent him from exercising with respect to the same estate any powers (other than powers under the section) exercisable by him with respect thereto under the Act and Rules, if duly appointed to exercise the same.

Administration by the Public Trustee, however, is not confined to cases where application is made to him by a person entitled to apply to the Court for administration, for, where proceedings have been instituted in any Court for the administration of an estate, and it appears to the Court that by reason of the small value of the estate it can be more economically administered by the Public Trustee than by the Court, or that for any other reason it is expedient that the estate should be administered by the Public Trustee instead of the Court, the Court has power to order that the estate shall be administered by the Public Trustee, and thereupon (subject to any directions by the Court) this section will apply as if the administration of the estate had been undertaken by the Public Trustee in pursuance of this section (see Sub-section 5).

The Court, it is conceived, will not, when ordering an estate to be administered by the Public Trustee, be bound by the limit as to value imposed in cases where administration is undertaken by the Public Trustee on application, but the Court will probably decline to exercise the jurisdiction conferred on it by the section, save in cases where the estate to be administered is comparatively a small one.

As to the meaning of the expression "Court" see Section 15, *post*.

It must be borne in mind that the Public Trustee is expressly forbidden to accept any trust which involves the management or carrying on of any business, except in the cases in which he may be authorised to do so by Rules made under the Act, or the administration of any estate known or believed by him to be insolvent (see Section 2, Sub-section 4, and *ante*, p. 295).

It seems that even where the estate is a small one within the meaning of the section, and the persons beneficially entitled are persons of small means, and the trust is one which the Public Trustee may accept, yet he will not be bound to undertake administration if he should see good reason for refusing (see Sub-section 1).

In the case of an application for the administration of the estate of a deceased person, probate or administration, as the case may be, will, it is apprehended, have to be obtained before the application is made, or at all events before the Public Trustee will give an undertaking to administer.

By Rule 29 of the Rules made under the Act (see Appendix 1., Part D.) the Public Trustee is empowered to make advances for the purposes of any trust estate in the course of administration or about to be administered by him out of any moneys which may be placed at his disposal by the Treasury for that purpose and upon such terms as he may think fit.

Sub-section 2.—The effect of the Public Trustee by declaration in writing under his hand and seal undertaking to administer will be to vest the trust property, other than stock and any copyhold land forming part of the estate, in the Public Trustee, and to vest in him the right to transfer or call for the transfer of any stock forming part of the estate, and also to give him with respect to any copyhold land forming part of the estate the like powers as if he had been appointed by the Court under Section 33 of The Trustee Act, 1893, to convey the land; and Section 34 of that Act is to apply accordingly.

The Public Trustee, however, is not to exercise the right of himself transferring stock without the leave of the Court. As to communication between the Public Trustee and the Court for the purposes of this section see Sub-section 4.

The expression “stock,” by virtue of Section 15 of the Act, has the same meaning as in The Trustee Act, 1893, where it is defined to include fully paid-up shares, and, so far as relates to vesting orders made by the Court under that Act, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein (see Section 50 of that Act, *ante*, p. 246).

Section 33 of The Trustee Act, 1903, provides that where a vesting order can be made under any of the foregoing provisions of that Act the High Court may, if it is more convenient, appoint a person to convey the land, and a conveyance by that person in conformity with the order shall have the same effect as an order under the appropriate provision. Section 34 of the same Act provides that where an order is made under that Act appointing any person to convey any copyhold land that person shall execute and do all such assurances and things for completing the assurance of the land; and the lord and lady of the manor and every other person shall, subject to the customs of the manor and the usual payments, be bound to make admittance to the land, and to do all other acts for completing the assurance thereof, as if the persons in whose place an appointment is made were free from disability and had executed and done those assurances and things.

The Public Trustee, therefore, will be in a position to deal effectively with any copyhold land forming part of an estate which he has undertaken to administer, since on his making the

necessary surrender or other copyhold assurance the person to whom he conveys will, subject to the customs of the manor and the usual payments, be entitled to admittance.

“Copyhold Land.”—The expression “land” by The Interpretation Act, 1889 (52 & 53 Vict. c. 63, Section 3), includes messuages, tenements, and hereditaments, houses and buildings.

Sub-section 3.—For the purposes of enabling the Public Trustee to administer small estates under the powers of the section he has by Rule 16 (see Appendix I., *post*) had conferred on him (subject to the provisions of Rule 17 as to the manner in which he is to take the opinion of the Court upon questions arising in the course of an administration) all the administrative powers and authorities exercisable by a Master of the Supreme Court acting in the administration of an estate.

The powers and authorities exercisable by a Master of the Supreme Court acting in the administration of an estate include power to take accounts, make necessary inquiries, adjudicate upon the claims of creditors, and realise assets.

Sub-section 4.—As to the power of the Lord Chancellor to make Rules for carrying into effect the objects of the Act see Section 14, *post*.

By Rule 17 (see Appendix I., Part D., *post*) the Public Trustee is enabled, in manner therein provided, and without taking judicial proceedings, to take the opinion of the High Court upon any question arising in the course of an administration under the section. The Judge to whom the question is referred may, before giving his opinion, require the attendance of, or communicate with, any person interested in the estate as trustee or beneficiary, but no such person has a right to be heard by the Judge unless he otherwise directs; and the Judge is to give his opinion to the Public Trustee, who is to act in accordance therewith, and is bound upon the request in writing of any such interested person to communicate to him the effect of such opinion.

Sub-section 5.—An order made under this sub-section by the Court that an estate shall be administered by the Public Trustee will, so far as regards the vesting of such estate in him, have the same effect as an undertaking to administer duly given by him under Sub-section 2.

(2) *As Custodian Trustee*

4. (1) Subject to Rules under this Act the Public Trustee may, if he consents to act as such, and whether or not the number of trustees has

Custodian trustee.

been reduced below the original number, be appointed to be custodian trustee of any trust:—

- (a) By order of the Court made on the application of any person on whose application the Court may order the appointment of a new trustee; or
- (b) By the testator, settlor, or other creator of any trust; or
- (c) By the person having power to appoint new trustees.

(2) Where the Public Trustee is appointed to be custodian trustee of any trust—

- (a) The trust property shall be transferred to the custodian trustee as if he were sole trustee, and for that purpose vesting orders may, where necessary, be made under The Trustee Act, 1893.
- (b) The management of the trust property and the exercise of any power or discretion exercisable by the trustees under the trust shall remain vested in the trustees other than the custodian trustee (which trustees are hereinafter referred to as “the managing trustees”).
- (c) As between the custodian trustee and the managing trustees, and subject and without prejudice to the rights of any other persons, the custodian trustee shall have the custody of all securities and documents of title relating to the trust property, but the managing trustees

shall have free access thereto, and be entitled to take copies thereof or extracts therefrom.

- (d) The custodian trustee shall concur in and perform all acts necessary to enable the managing trustees to exercise their powers of management or any other power or discretion vested in them (including the power to pay money or securities into Court), unless the matter in which he is requested to concur is a breach of trust, or involves a personal liability upon him in respect of calls or otherwise, but, unless he so concurs, the custodian trustee shall not be liable for any act or default on the part of the managing trustees or any of them.
- (e) All sums payable to or out of the income or capital of the trust property shall be paid to or by the custodian trustee: Provided that the custodian trustee may allow the dividends and other income derived from the trust property to be paid to the managing trustees or to such person as they direct, or into such bank to the credit of such person as they may direct, and in such case shall be exonerated from seeing to the application thereof and shall not be answerable for any loss or misapplication thereof.
- (f) The power of appointing new trustees, when exerciseable by the trustees, shall be exerciseable by the managing trustees

alone, but the custodian trustee shall have the same power of applying to the Court for the appointment of a new trustee as any other trustee.

- (g) In determining the number of trustees for the purposes of The Trustee Act, 1893, the custodian trustee shall not be reckoned as a trustee.
- (h) The custodian trustee, if he acts in good faith, shall not be liable for accepting as correct and acting upon the faith of any written statement by the managing trustees as to any birth, death, marriage, or other matter of pedigree or relationship, or other matter of fact, upon which the title to the trust property or any part thereof may depend, nor for acting upon any legal advice obtained by the managing trustees independently of the custodian trustee.
- (i) The Court may, on the application of either the custodian trustee, or any of the managing trustees, or of any beneficiary, and on proof to their satisfaction that it is the general wish of the beneficiaries, or that on other grounds it is expedient to terminate the custodian trusteeship, make an order for that purpose, and the Court may thereupon make such vesting orders and give such directions as under the circumstances may seem to the Court to be necessary or expedient.

(3) The provisions of this section shall apply in like manner as to the public trustee to any banking or insurance company or other body corporate entitled by Rules made under this Act to act as custodian trustee, with power for such company or body corporate to charge and retain or pay out of the trust property fees not exceeding the fees chargeable by the Public Trustee as custodian trustee.

Section 4.—The object of this section is to afford means whereby the administration of trusts, and the actual management of trust property, may be left in the hands of trustees appointed in the ordinary way, whilst the trust property itself is protected against misapplication or misappropriation by those trustees by being vested in a custodian trustee, whose sole duty will be its custody and protection, and whose financial responsibility will practically be beyond question.

On the appointment of the custodian trustee the trust property will be transferred to or otherwise vested in him as if he were sole trustee, and he is to have the custody of all securities and documents of title relating to the trust property; but in order to enable the managing trustees to manage the trust property, and to exercise any power or discretion vested in them by the terms of their trust, the custodian trustee is bound to concur in and perform all acts necessary to enable them to exercise their powers of management or any other power or discretion vested in them (including the power to pay money or securities into Court), unless the matter in which he is requested to concur is a breach of trust, or involves a personal liability upon him in respect of calls or otherwise. The managing trustees are also to have free access to the securities and documents of title in the hands of the custodian trustee relating to the trust property, and to be at liberty to take copies thereof or extracts therefrom (see Sub-section 2 [a], [b], [c], and [d]).

And, as a further protection to the trust property and the interests of the beneficiaries, all sums payable to or out of income or capital are to be paid to or by the custodian trustee (see Sub-section 2 [e]). The custodian trustee, however, will have a discretion to allow the dividends and other income of the trust property to be paid to the managing trustees or to such person as they may direct, or into to such bank to the credit of such person as they may direct, and where he exercises this discretion he will be exonerated from seeing to the application of the

income dealt with, and will not be answerable for any loss or misapplication thereof.

In exercising his discretion the custodian trustee will, it is apprehended, be bound to consider not only the character and position of the managing trustees, but also the wishes of the beneficiaries.

As the administration of the trust and the management of the trust property will be left entirely in the hands of the managing trustees, the custodian trustee must, when disbursing trust moneys to persons represented by the managing trustees to be entitled thereto as beneficiaries, and also when concurring in or performing acts alleged by the managing trustees to be necessary for the purposes of management or administration of the trust, rely to a large extent upon the honesty and diligence of the managing trustees, and the section therefore provides that where the custodian trustee acts in good faith he is not to be liable for accepting as correct and acting upon the faith of any written statement by the managing trustees as to any birth, death, marriage, or other matter of pedigree or relationship, or other matter of fact, upon which the title to the trust property or any part thereof may depend, nor for acting upon any legal advice independently obtained by the managing trustees (see Sub-section 2 [h]).

The custodian trustee is also to be exempt from all liability for acts or defaults on the part of the managing trustees or any of them unless done or committed with his concurrence (see Sub-section 2 [d]).

The custodian trustee may be either—

- (i.) The Public Trustee, if he consents to act; or
- (ii.) Any banking or insurance company or other body corporate willing to act and belonging to one of the classes of corporate bodies to be prescribed as entitled to act as custodian trustees by the Rules made under the Act (see Sub-section 3, and Section 14, Sub-section 1 [f]).

And such company or corporate body is empowered to charge and retain or pay out of the trust property by way of remuneration such fees as may be agreed, or in default of agreement fees not exceeding those chargeable by the Public Trustee as custodian trustee (see Sub-section 3).

As to the fees to be charged by the Public Trustee, in respect of the duties of his office, see Section 9, *post*, p. 325, and The Public Trustee (Fees) Order, 1909, and the Schedule thereto, B., Appendix I., Part E., *post*.

The bodies corporate entitled to act as custodian trustee are any such incorporated, banking, or insurance or guarantee or

trust company or friendly society, and any such body corporate established for charitable or philanthropic purposes, as may be approved by the Public Trustee and the Treasury.

Such approval may be granted subject to such conditions as the Treasury may require either generally or in any particular case, and is subject to be withdrawn at any time without reason assigned (see Rule 36, Appendix I., *post.*)

As to the general conditions of approval of corporate bodies desiring to act as custodian trustee see Appendix I., Part F., *post.*

Where it is desired to appoint a custodian trustee, resort will, probably, be had in most cases to the Public Trustee, for the guarantee afforded by the Consolidated Fund where the Public Trustee is appointed (see Section 7) is infinitely preferable to that afforded by the capital and assets of a company or corporate body, since the continued financial stability and prosperity of such a company or corporate body must always depend upon the honesty and good management of its officers (see the observations of Lord Hardwicke in *Trafford v. Boehm*, 3 Atk. 44).

A custodian trustee may, it will be observed, be appointed whether or not the number of trustees has been reduced below the original number. He is in fact to be an additional trustee appointed to watch over the trust property and to protect it from misapplication or malversation on the part of the trustees appointed under the instrument creating the trust.

He may be appointed—

- (a) By order of the Court made on the application of any person on whose application the Court might order the appointment of a new trustee; or
- (b) By the testator, settlor, or other creator of any trust; or
- (c) By the person having power to appoint new trustees (see Sub-section 1).

The mode of applying to the Court for the appointment of a custodian trustee will, it is conceived, be by originating summons, unless there be pending an action or proceeding in which a summons could be taken out.

Where a vesting order is necessary for the purpose of vesting the trust property in the custodian trustee to be appointed, an application for such order should, it is apprehended, be included in the summons, the Court being empowered for such purpose to make vesting orders under The Trustee Act, 1893 (see Sub-section 2 [a]).

As to vesting orders under The Trustee Act, 1893, see Sections 26 to 36 and Section 38 of that Act, *ante.*

The respondents to any application to the Court for the appointment of a custodian trustee should, it is conceived, be, as a general rule, all the beneficiaries and trustees who are not applicants.

In Sub-section 1 (c) "*the person having power to appoint new trustees*" means, it is apprehended, the person or persons nominated for the purpose of appointing new trustees by the instrument (if any) creating the trust, or if there is no such person, or no such person willing and able to act, the surviving or continuing trustees or trustee for the time being or the personal representatives of the last surviving or continuing trustee. The appointment should, no doubt, be in writing (see Section 10 of The Trustee Act, 1893, *ante*).

The power of appointing new trustees of a trust, when exercisable by the trustees, will, notwithstanding the appointment of a custodian trustee, be exercisable by the managing trustees alone, but the custodian trustee is to have the same power of applying for the appointment of a new trustee as any other trustee (see Sub-section 2 [f]).

As to the power of the Court to appoint new trustees see Section 25 of The Trustee Act, 1893, *ante*, p. 151.

It is apprehended that where an application to the Court for the appointment of new trustees is made by managing trustees the custodian trustee will, if he do not join in the application, have to be made a respondent thereto.

It is provided by Section 10 of The Trustee Act, 1893, that so far as a contrary intention is not expressed in the instrument (if any) creating the trust, it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but except where only one trustee was originally appointed, a trustee shall not be discharged under that section from his trust unless there will be at least two trustees to perform the trust. The present Act, however, expressly enacts that in determining the number of trustees for the purposes of The Trustee Act, 1893, the custodian trustee shall not be reckoned as a trustee (see Sub-section 2 (g) of the section now under discussion).

A testator may appoint the Public Trustee to be a custodian trustee under any testamentary instrument without previously applying to him for his consent to act as such (see Rule 9 (1), Appendix I., Part D., *post*).

No such appointment by a testator, however, is to have effect, and no appointment of the Public Trustee to be a custodian trustee is to be made, except by a testator, unless and until (in either case) the consent of the Public Trustee to act as such trustee shall have been applied for and obtained in accordance with the Rules. But in the case of any such appointment by a testator the Public Trustee is at liberty at any time after the

fact of his appointment has come to his knowledge to act as if such application had been received by him (see Rule 9 [2]).

An application to the Public Trustee to act as custodian trustee may be made by the persons, or any one of the persons, having power under the Act to make the appointment, and where the appointment has been made by a testator who has not in his lifetime obtained the sanction of the Public Trustee by any trustee or beneficiary under the testamentary instrument (see Rule 10 (c), (a), and Sub-section 1 of this section).

As to the mode in which the application is to be made see Rule 11 (1).

As to the persons by whom and the mode in which the application to the Public Trustee must be made see Rules 10 and 11.

It is the duty of any person appointed by a testator to be a co-trustee with the Public Trustee, and not renouncing or disclaiming the trust, to give to the Public Trustee notice in writing of such appointment as soon as practicable after the same has come to his knowledge (see Rule 10 [2]).

Upon receiving an application to act the Public Trustee will, after making the necessary inquiries (see Rule 11 (2) and Rule 12), decide whether the same ought to be accepted or refused, and will forthwith give notice to the applicant of such acceptance or refusal, and in case of acceptance will execute an instrument expressing his consent to act in the trust.

It must be borne in mind that although the Public Trustee is empowered to act as custodian trustee of a trust which involves the management or carrying on of a business, it is upon the condition that he shall not act in the management or carrying on of such business, and he shall not hold any property of such a nature as will expose the holder thereof to any liability except under exceptional circumstances, and when he is satisfied that he is fully indemnified or secured against loss (see *ante*, p. 300).

The custodian trusteeship may be determined by an order of the Court made on the application of either the custodian trustee, or any of the managing trustees, or of any beneficiary, and on its being shown to the satisfaction of the Court that it is the general wish of the beneficiaries, or on other grounds it is expedient that such determination should take place (see Sub-section 2 [i]).

Upon making an order terminating the custodian trusteeship the Court will have power to make such vesting orders and give such directions as under the circumstances may seem to the Court to be necessary or expedient (see Sub-section 2 [i]).

The expression "Court" in the Act means the High Court, and, as respects trusts within its jurisdiction, the County Court (see Section 15).

By The Interpretation Act, 1889 (Section 13 [3]), "High Court," when used with reference to England or Ireland, is defined

as meaning His Majesty's High Court of Justice in England or Ireland, as the case may be.

The jurisdiction of the County Court in trust matters is limited to cases in which the trust estate or fund does not exceed in amount or value the sum of £500 (see Sections 67 and 68 of The County Courts Act, 1888 (51 & 52 Vict. 43), and see *ante* p. 235 *et seq.*).

(3) *As an Ordinary Trustee.*

Appoint-
ment of
Public
Trustee to
be trustee,
executor,
&c.

5. (1) The Public Trustee may by that name, or any other sufficient description, be appointed to be trustee of any will or settlement or other instrument creating a trust or to perform any trust or duty belonging to a class which he is authorised by the Rules made under this Act to accept, and may be so appointed, whether the will or settlement or instrument creating the trust or duty was made or came into operation before or after the passing of this Act, and either as an original or as a new trustee, or as an additional trustee, in the same cases, and in the same manner, and by the same persons or Court, as if he were a private trustee, with this addition, that, though the trustees originally appointed were two or more, the Public Trustee may be appointed sole trustee.

(2) Where the Public Trustee has been appointed a trustee of any trust, a co-trustee may retire from the trust under and in accordance with Section Eleven of The Trustee Act, 1893, notwithstanding that there are not more than two trustees, and without such consents as are required by that section.

(3) The Public Trustee shall not be so appointed either as a new or additional trustee where the

will, settlement, or other instrument creating the trust or duty contains a direction to the contrary, unless the Court otherwise order.

(4) Notice of any proposed appointment of the Public Trustee either as a new or additional trustee shall where practicable be given in the prescribed manner to all persons beneficially interested who are resident in the United Kingdom and whose addresses are known to the persons proposing to make the appointment, or, if such beneficiaries are infants, to their guardians, and if any person to whom such notice has been given within twenty-one days from the receipt of the notice applies to the Court, the Court may, if having regard to the interests of all the beneficiaries it considers it expedient to do so, make an order prohibiting the appointment being made, provided that a failure to give any such notice shall not invalidate any appointment made under this section.

Section 5, Sub-section 1.—As to the trusts or duties which the Public Trustee is authorised by the Rules made under the Act to accept see Rules 7 and 8, Appendix I., Part D., *post*.

It is apprehended that under this sub-section the Public Trustee may be appointed, not only as a trustee in the ordinary sense, but may also be appointed by a testator as an executor of his will, or be nominated by the next-of-kin of an intestate to obtain letters of administration and to act as administrator in their behalf.

The section does not, it is true, in terms expressly authorise the appointment of the Public Trustee to act as an executor or administrator, but the marginal note refers to the "appointment of Public Trustee to act as trustee, executor, &c.," and though it may be doubtful whether the marginal notes to an Act of Parliament can be referred to for the purposes of its interpretation (see the remarks of Bramwell and Baggallay, L. J., in *Attorney-General v. Great Eastern Railway Co.*, 11 Ch. D. 460, 461, and the

remarks of Jessel, M. R., in *Sutton v. Sutton*, 22 Ch. D. 511, 513), the definition of trust given by the Act includes an executorship or administratorship, and "trustee" is to be construed accordingly (Section 15). Moreover, Section 6 of the Act, it will be seen, makes provision as to the grant of probates of wills or letters of administration where he is authorised by any Rule to be made under the Act to accept probates of wills or letters of administration, and Rule 7 expressly authorises the Public Trustee to accept by that name probates or letters of administration of any kind (see Appendix I., Part D., *post*).

Where the Public Trustee obtains letters of administration, and acts in the administration of the estate of an intestate on behalf of the next-of-kin, he will, it is conceived, be in the position of an express trustee.

Provision is also made by the Act for enabling an executor or administrator, with the sanction of the Court, to transfer the estate of his testator or intestate to the Public Trustee (see Section 6, Sub-section 2, *post*).

The Public Trustee may be appointed as a trustee either originally by the instrument creating the trust, or as a new trustee, or as an additional trustee, in the same cases, and in the same manner, and by the same persons or Court, as if he were a private trustee, with this addition, that, though the trustees originally appointed were two or more, the Public Trustee may be appointed sole trustee.

As to the appointment of new trustees, either under a power statutory or express or by the Court, see *ante*, p. 70 *et seq.* and p. 151 *et seq.*

As to the appointment of an additional trustee see Section 10, Sub-section 2 (a), of The Trustee Act, 1893, *ante*.

The appointment of an additional trustee can only be made on the appointment of a new trustee or trustees taking place, and the same rule would, it is conceived, apply to the appointment of the Public Trustee as additional trustee.

The provision that, though the trustees originally appointed of a trust instrument were two or more, the Public Trustee may be appointed sole trustee, effects a modification of Section 10 of The Trustee Act, 1893, which confers powers for the appointment of new trustees in the place of trustees desiring to be discharged from the trusts reposed in them, but declares (see Sub-section 2 [c]) that, except where one trustee only was originally appointed, a trustee should not be discharged under that section from his trust unless there should be at least two trustees to perform the trust.

No appointment of the Public Trustee to be a trustee is to be made except, by a testator, unless and until the consent of the Public Trustee to act as such trustee has been applied for and obtained in accordance with the Rules (see Rule 9 [2]).

An application to the Public Trustee to act as trustee may under Rule 10 (1) be made—

- (a) Where the appointment has been made by a testator—by any trustee or beneficiary under the testamentary instrument; and
- (b) In the case of the estate of an intestate—by any person appearing to be beneficially interested in the estate; and
- (c) In any case—by the person or any one of the persons having power under the Act to make the appointment.

As to the mode in which application to the Public Trustee is to be made see Rule 11 (1).

Upon receiving any such application the Public Trustee after making the inquiries directed by the Rules (see Rule 11 (2) and Rule 12) will decide whether the application ought to be accepted or refused, and will forthwith give notice to the applicant of such acceptance or refusal, and in case of acceptance will execute an instrument expressing his consent to act in the trust (see Rule 13 [1]).

It should be remembered that the power of the Public Trustee to accept a trust which involves the management or carrying on of a business is a strictly limited one (see Section 2, Sub-section 4, *ante*).

It is the duty of any person appointed by a testator to be a co-trustee with the Public Trustee, and not renouncing or disclaiming the trust, to give to the Public Trustee notice in writing of such appointment as soon as practicable after the same has come to his knowledge (see Rule 10 [2]).

A Register (known as "the Principal Register") is kept at the Central Office in London of all trusts in which the Public Trustee is acting as trustee or custodian trustee, and of all estates in course of administration under Section 3 of the Act, and whether the same are being administered from his Central Office or from any Branch Office (see Rule 19 [1]).

Under Rule 32 the Public Trustee, upon an application in writing by or with the authority of any person interested in the trust property—

- (a) Must permit the applicant or his solicitor or other authorised agent to inspect and take copies of any entry in any Register relating to the trust or estate and (so far as the interest of the applicant in the trust property is or may be affected thereby) of any account, notice, or other document in the custody of the Public Trustee;

- (b) Must, at the expense of the applicant, supply him or his solicitor or other authorised agent with a copy of any such entry, account, or document as aforesaid, or of any extract therefrom;
- (c) Must give to such applicant or his solicitor or other authorised agent such information respecting the trust or estate and the trust property as shall be reasonably requested in the application, and shall be within the power of the Public Trustee.

But, save as aforesaid, the Public Trustee is bound to observe strict secrecy in respect of every trust or estate in course of administration by him.

Subject to the provisions of the Act and of the Rules, and to the terms of any particular trust, the Public Trustee may, in the administration of any trust or estate, take and use professional advice and assistance in regard to legal and other matters, and may act on credible information (though less than legal evidence).

The Public Trustee may invest or retain invested money belonging to any trust or estate and coming to his hands in any investment authorised by the trust instrument or (save as otherwise provided by that instrument) authorised by law for the investment of trust funds, and may (save as so provided) retain any investment existing at the date of the commencement of the trust, or (where the trust arises on an intestacy) at the date of the death of the intestate (see Rule 20, *post*).

The income of any trust property administered by the Public Trustee may be paid to the person for the time being entitled to receive the same either through a bank or direct, and where such person is a married woman may be so paid notwithstanding any restraint on anticipation.

And where any person is solely entitled to receive any income, without any restraint on anticipation, the Public Trustee may, on the request in writing of that person, authorise him for such period as the Public Trustee may think fit to collect or arrange for the collection of such income (see Rule 27 [4]).

The Public Trustee is also authorised, if the special circumstances of the case appear to him to render it desirable, to pay to his co-trustee, or allow him to receive, the income of the trust property or any part thereof, on such co-trustee undertaking to apply it in the manner directed by the trust (see Rule 28).

This sub-section is retrospective to the extent that the Public Trustee may be appointed under it to act as a trustee, or to perform a trust or duty of a class which he is authorised by the Rules to accept, whether the instrument creating the trust in which he is to act, or the duty which he is to perform, was made or came into operation before or after the passing of the Act.

Sub-section 2.—It is provided by Section 11 of The Trustee Act, 1893 (see *ante*, p. 91), that where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person (if any) as is empowered to appoint trustees by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under the Act. without any new trustee being appointed in his place.

The effect, therefore, of this sub-section of the present Act is that where the Public Trustee may be acting in a trust with one co-trustee only such co-trustee may, without the consent of any other person, and notwithstanding that the Public Trustee will be left as sole trustee, by executing a deed in the nature of a disclaimer, discharge himself from the trust.

Sub-section 3.—The power of a person creating a trust to forbid the appointment of the Public Trustee as a new or additional trustee thereof will not, it must be observed, be absolute, since the Court is to have power, notwithstanding any direction to the contrary, to authorise such an appointment.

Sub-section 4.—The “prescribed manner” in which the notice provided for by this sub-section is to be given means the manner for the time being prescribed by the Rules to be made under the Act (see Section 15, *post*).

By Rule 40 (2), (3) of the Rules made under the Act (see Appendix I., Part D., *post*) any notice or application required to be given or made for the purposes of the Act or the Rules to any person other than the Public Trustee may be addressed to that person at his last known place of abode or place of business. And any such notice or application may be delivered at the place to which it is addressed, or may be served by post.

The provisions of the sub-section will afford a protection to beneficiaries in cases where a person having the power of appointing trustees is bent upon appointing the Public Trustee as a new or additional trustee, in spite of opposition to such a course by the beneficiaries or a majority of them.

Trustees who are desirous of retiring and have a power of appointing new trustees vested in them ought not to have resort to an appointment of the Public Trustee under this section until they have made every effort to overcome any difficulty which has arisen (*in re Hope Johnstone's Settlement*, 25 T. L. R., p. 369).

And where one of two trustees with the usual power of appointing new trustees vested in them, being desirous of retiring, applied to his co-trustee to concur with him in appointing the Public

Trustee in his place to act jointly with such co-trustee as the continuing trustee, and the co-trustee expressed his willingness to appoint a new trustee, but declined to appoint the Public Trustee, it was held, on the application of the retiring trustee and three of the beneficiaries (those who had vested interests) by originating summons asking that the Public Trustee might be appointed in the place of the retiring trustee, and that the continuing trustee might bear his own costs of the application, that the continuing trustee having acted in good faith was entitled to his costs (*in re Kensit*, 1908, W. N., p. 235).

Power as to
granting
probate.

6. (1) If in pursuance of any Rule under this Act, the Public Trustee is authorised to accept by that name probates of wills or letters of administration, the Court having jurisdiction to grant probate of a will or letters of administration may grant such probate or letters to the Public Trustee by that name, and for that purpose the Court shall consider the Public Trustee as in law entitled equally with any other person or class of persons to obtain the grant of letters of administration, save that the consent or citation of the Public Trustee shall not be required for the grant of letters of administration to any other person, and that, as between the Public Trustee and the widower, widow, or next-of-kin of the deceased, the widower, widow, or next-of-kin shall be preferred, unless for good cause shown to the contrary.

(2) Any executor who has obtained probate or any administrator who has obtained letters of administration, and notwithstanding he has acted in the administration of the deceased's estate, may, with the sanction of the Court, and after such notice to the persons beneficially

interested as the Court may direct, transfer such estate to the Public Trustee for administration either solely or jointly with the continuing executors or administrator, if any. And the order of the Court sanctioning such transfer shall, subject to the provisions of this Act, give to the Public Trustee all the powers of such executor and administrator, and such executor and administrator shall not be in any way liable in respect of any act or default in reference to such estate subsequent to the date of such order, other than the act or default of himself or of persons other than himself for whose conduct he is in law responsible.

Section 6, Sub-section 1.—By Rule 7 (1), (b) of the Rules under the Act (see Appendix I., Part D., *post*), the Public Trustee is authorised by that name to accept probate or letters of administration of any kind.

As to what the expression “letters of administration” as used in the Act means see Section 15, *post*.

It is conceived that letters of administration could in general only be granted to the Public Trustee with the consent of the next-of-kin or the other person or persons entitled thereto. And it is to be observed that the consent or citation of the Public Trustee will not be required for the grant of letters to any other persons.

Where administration is granted to the Public Trustee he is not to be required to give the usual bond for due administration, but is to be subject to the same liabilities and duties as if he had given such bond (see Section 11, Sub-section 4, *post*).

Section 6, Sub-section 2.—This sub-section gives executors a very useful power of transferring to the Public Trustee the administration of an estate, even after administration may have been commenced by others, provided the Court sanctions the transfer.

The effect of the transfer is to give the Public Trustee, in addition to the powers which under the Act are vested in him as such, “*all the powers of such executor and administrator.*” The liability of the executor ceases from the moment of such transfer. A form of summons by one of two executors for the sanction of the Court to the transfer of the testator’s estate to the Public Trustee solely or to the Public Trustee jointly with the other executor for the purposes of administration is given in Appendix II., *post*.

LIABILITY : OFFICERS AND OFFICES : FEES.

Liability of
Consoli-
dated Fund.

7. (1) The Consolidated Fund of the United Kingdom shall be liable to make good all sums required to discharge any liability which the Public Trustee, if he were a private trustee, would be personally liable to discharge, except where the liability is one to which neither the Public Trustee nor any of his officers has in any way contributed, and which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in that case the Public Trustee shall not, nor shall the Consolidated Fund, be subject to any liability.

(2) All sums payable in pursuance of this section out of the Consolidated Fund shall be charged on and issued out of that fund or the growing produce thereof.

Section 7.—The liability by this section imposed on the Consolidated Fund is in respect of all liabilities incurred by the Public Trustee for which he would be liable if he were a private trustee, except where the liability is one to which neither he nor any of his officers has contributed, and which neither he nor any of his officers could by reasonable diligence have averted.

Officers and
offices.

8. (1) The Lord Chancellor shall appoint a fit person to the office of Public Trustee, who shall hold office during pleasure, and receive such salary or fees, and be appointed on such terms, as the Treasury may determine.

(2) The Lord Chancellor shall appoint such persons to be officers of the Public Trustee as, subject to the sanction of the Treasury, he may

consider necessary for the purposes of this Act, and those officers shall hold office upon such terms, and be remunerated at such rates and in such manner, as the Treasury may sanction.

(3) Any person appointed to be Public Trustee or an officer of the Public Trustee may, and shall, if the Treasury so require, be a person already in the public service.

(4) The Public Trustee shall, if so directed by the Lord Chancellor with the concurrence of the Treasury, maintain offices in London and elsewhere, and, so far as practicable, buildings already used for public purposes shall be used for such offices.

(5) The salary or remuneration of the Public Trustee and his officers, and such other expenses of executing his office or otherwise carrying this Act into effect as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

The Public Trustee has now offices at 3 and 4 Clement's Inn, Strand, W.C. Office hours 10 to 4, Saturdays 10 to 1.

9. (1) There shall be charged in respect of the duties of the Public Trustee such fees, whether by way of percentage or otherwise, as the Treasury with the sanction of the Lord Chancellor may fix, and such fees shall be collected and accounted for by such persons, and in such manner, and shall be paid to such account, as the Treasury direct.

Fees
charged by
Public
Trustee.

(2) Any expenses which might be retained or paid out of the trust property if the Public Trustee were a private trustee shall be so retained or paid, and the fees shall be retained or paid in the like manner as and in addition to such expenses.

(3) Such fees shall, under the regulations of the Treasury, be applied as an appropriation in aid of moneys provided by Parliament for expenses under this Act, and so far as not so applied shall be paid into the Exchequer.

(4) The fees under this section shall be arranged from time to time so as to produce an annual amount sufficient to discharge the salaries and other expenses incidental to the working of this Act (including such sum as the Treasury may from time to time determine to be required to insure the Consolidated Fund against loss under this Act) and no more.

(5) The incidence of the fees and expenses under this section as between capital and income shall be determined by the Public Trustee.

Section 9.—This section deals with the financial burden imposed by the working of the Act. The object of it is to ensure a balance between expenditure and income.

The "Fees Order" now in force is the The Public Trustee (Fees) Order, 1909 (see Appendix I., Part E., *post*), which rescinds the Order of 1907, but without prejudice to any obligation or arrangement now subsisting with respect to any fee chargeable under that Order.

Sub-section 5 is important, as it empowers the Public Trustee to apportion the fees and expenses under the section between the capital and income of the trust fund, a matter of intricacy and importance as between life tenants and remaindermen.

SUPPLEMENTAL PROVISIONS AS TO PUBLIC TRUSTEE.

10. (1) A person aggrieved by any act or omission or decision of the Public Trustee in relation to any trust may apply to the Court, and the Court may make such order in the matter as the Court thinks just. Appeal to the Court.

(2) Subject to Rules of Court, an application under this section to the High Court shall be made to a Judge of the Chancery Division of the High Court in Chambers.

Section 10.—This section is of considerable value, as it in substance gives an appeal to the High Court from the *acts, omissions, or decisions* of the Public Trustee by any *person aggrieved* by any such act, omission, or decision. Here, as in other cases under the Act, the appeal lies to the Chancery Division in Chambers, and the procedure would be by originating summons in the matter of the particular estate, this Act, and *inter partes*, the aggrieved person being plaintiff, with the Public Trustee as defendant.

See also as to money paid into account of infant or person of unsound mind, R.S.C.O. 22. Sections 2 and 15.

11. (1) The Public Trustee shall not, nor shall any of his officers, act under this Act for reward, except as provided by this Act. Mode of action of Public Trustee.

(2) The Public Trustee may, subject to the Rules made under this Act, employ for the purposes of any trust such solicitors, bankers, accountants, and brokers or other persons as he may consider necessary, and in determining the persons to be so employed in relation to any trust the Public Trustee shall have regard to the interests of the trust, but subject to this shall, whenever practicable, take into consideration the wishes of the creator of the trust and of the other trustees (if any), and of the beneficiaries, either

expressed or as implied by the practice of the creator of the trust or in the previous management of the trust.

(3) On behalf of the Public Trustee such person as may be prescribed may take any oath, make any declaration, verify any account, give personal attendance at any Court or place, and do any act or thing whatsoever which the Public Trustee is required or authorised to take, make, verify, give, or do: Provided that nothing in this Act or in any Rule made under this Act shall confer upon any person not otherwise entitled thereto any right to appear or act, or be heard in or before any Court or tribunal on behalf or instead of the Public Trustee, or to do any act whatsoever on behalf or on the instructions of the Public Trustee which could otherwise only be lawfully done by a barrister or a duly certificated solicitor.

(4) Where any bond or security would be required from a private person upon the grant to him of administration, or upon his appointment to act in any capacity, the Public Trustee, if administration is granted to him or if he is appointed to act in such capacity as aforesaid, shall not be required to give such bond or security, but shall be subject to the same liabilities and duties as if he had given such bond or security.

(5) The entry of the Public Trustee by that name in the books of a company shall not constitute notice of a trust, and a company shall not be entitled to object to enter the name

of the Public Trustee on its books by reason only that the Public Trustee is a corporation, and, in dealings with property, the fact that the person or one of the persons dealt with is the Public Trustee, shall not of itself constitute notice of a trust.

Section 11, Sub-section 1.—This sub-section must be read in connection with Section 9.

Sub-section 2.—The two considerations to be observed by the Public Trustee in employing persons are (1) the interests of the trust, and (2) the wishes of the creator of the trust and of the other trustees (if any) and of the beneficiaries. The interests of the trust will, of course, be the paramount consideration with the Public Trustee.

The Public Trustee in deciding whom to employ, whether as solicitor, banker, accountant, broker, or person, would no doubt be predisposed to those already connected with the administration of the particular trust (if any).

The Public Trustee's agents are carefully restrained by Sub-section 3 from infringing on the province of barristers or solicitors.

12. The provisions of this Act with respect to the High Court shall, in their application to cases within the jurisdiction of a Palatine Court, include that Court, and the Public Trustee shall provide an address within the County Palatine where service upon him of any proceedings under this Act in such Palatine Court may be effected; the Rules of Court relating to the exercise of the jurisdiction of a Palatine Court under this Act shall be made by the authority having power to make general rules and orders of that Court.

Application
of Act to
Palatine
Courts.

Section 12.—This section merely provides for the application of the Act to the County Palatine.

INVESTIGATION AND AUDIT OF TRUST ACCOUNTS.

Investigation and audit of trust accounts.

13. (1) Subject to Rules under this Act and unless the Court otherwise orders, the condition and accounts of any trust, shall, on an application being made and notice thereof given in the prescribed manner by any trustee or beneficiary, be investigated and audited by such solicitor or public accountant as may be agreed on by the applicant and the trustees or, in default of agreement, by the Public Trustee or some person appointed by him :

Provided that (except with the leave of the Court) such an investigation or audit shall not be required within twelve months after any such previous investigation or audit, and that a trustee or beneficiary shall not be appointed under this section to make an investigation or audit.

(2) The person making the investigation or audit (hereinafter called "the auditor") shall have a right of access to the books, accounts, and vouchers of the trustees, and to any securities and documents of title held by them on account of the trust, and may require from them such information and explanation as may be necessary for the performance of his duties, and upon the completion of the investigation and audit shall forward to the applicant and to every trustee a copy of the accounts, together with a report thereon, and a certificate signed by him to the effect that the accounts exhibit a true view of the state of the affairs of the trust and that he has had the securities of the trust fund invest-

ments produced to and verified by him or (as the case may be) that such accounts are deficient in such respects as may be specified in such certificate.

(3) Every beneficiary under the trust shall, subject to Rules under this Act, be entitled at all reasonable times to inspect and take copies of the accounts, report, and certificate, and, at his own expense, to be furnished with copies thereof or extracts therefrom.

(4) The auditor may be removed by order of the Court, and, if any auditor is removed, or resigns, or dies, or becomes bankrupt or incapable of acting before the investigation and audit is completed, a new auditor may be appointed in his place in like manner as the original auditor.

(5) The remuneration of the auditor and the other expenses of the investigation and audit shall be such as may be prescribed by Rules under this Act, and shall, unless the Public Trustee otherwise directs, be borne by the estate; and, in the event of the Public Trustee so directing, he may order that such expenses be borne by the applicant or by the trustees personally or partly by them and partly by the applicant.

(6) If any person having the custody of any documents to which the auditor has a right of access under this section fails or refuses to allow him to have access thereto or in anywise obstructs the investigation or audit, the auditor may apply

to the Court, and thereupon the Court shall make such order as it thinks just.

(7) Subject to Rules of Court, applications under or for the purposes of this section to the High Court shall be made to a Judge of the Chancery Division in Chambers.

If any person in any statement of accounts, report, or certificate required for the purposes of this section wilfully makes a statement false in any material particular, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, and on summary conviction to imprisonment for a term not exceeding six months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment.

Section 13, Sub-section 1.—This is a very far-reaching section, as under it the condition and accounts of *any trust shall*, on the application of any trustee or beneficiary, be investigated by a solicitor or public accountant appointed for the purpose, or by the Public Trustee or a person appointed by him. The scope of the investigation is (a) *the condition*, and (b) *the accounts* of the trust. An inquiry into the “*condition*” of a trust would in some cases involve an investigation into the past history of the trust, with a view to ascertain its comparative position at the time of the investigation.

The investigation and audit can be applied for by any *trustee* or *beneficiary*.

No beneficiary or trustee can be appointed to make the investigation.

Sub-section 2.—The person making the investigation has the following rights:—

- (a) A right of access to the books, accounts, vouchers, securities, and documents of the trustees.
- (b) Access to any securities or documents of title.
- (c) A right to have from the trustees such information and explanation as may be necessary for the performance of his duties.

The auditor has after his investigation to furnish to the applicant and every trustee—

1. A copy of the accounts.
2. A report thereon.
3. A certificate (i.) that the accounts exhibit a true view of the state of affairs of the trust, and (ii.) that he has had the securities of the trust fund investments produced to and verified by him, or that such accounts are deficient.

The Rules (see Appendix I., Part D) indicate the procedure in these applications (see Rule 37 *et seq.*).

Notice has to be served, if the applicant is a beneficiary, on every trustee; if a trustee, then on the person entitled to the receipt of the income of the property.

Sub-section 3.—No Rule specifically dealing with the powers created by this clause are included in the Rules issued; the rights conferred by this section, therefore, remain intact.

Sub-section 4.—This sub-section makes provision for removal of the auditor and for filling the place when a vacancy occurs.

Sub-section 5.—The Public Trustee can, under this sub-section, direct the expenses of the investigation and audit to be borne by the person applying therefor or by the trustees according to the result, but in the absence of such a direction these expenses must be borne by the estate.

Sub-section 6.—If the Court make an order under this sub-section it can, no doubt, be enforced by committal, just as any other order of the Court ordering an act to be done (other than the payment of money) can.

Sub-section 7.—Under this sub-section, subject to Rules of Court, applications made for the purposes of the section to the High Court are to be made to a Judge of the Chancery Division in Chambers.

Sub-section 8.—This sub-section provides for the punishment of persons wilfully making false statements in accounts, reports, or certificates required for the purposes of this section.

RULES: DEFINITIONS: SHORT TITLE AND EXTENT.

14. (1) The Lord Chancellor shall, with the concurrence of the Treasury, make Rules for carrying into effect the objects of this Act, and

Rules.

in particular for all or any of the following purposes (that is to say):—

- (a) Establishing the office of Public Trustee and prescribing the trusts or duties he is authorised to accept or undertake, and the security, if any, to be given by the Public Trustee and his officers.
- (b) The transfer to and from the Public Trustee of any property.
- (c) The accounts to be kept and an audit thereof.
- (d) The establishment and regulation of any branch office.
- (e) Excluding any trusts from the operation of this Act or any part thereof.
- (f) The classes of corporate bodies entitled to act as custodian trustees.
- (g)* The form and manner in which notices under this Act shall be given.

(2) Every Rule under this Act shall be laid before each House of Parliament forthwith, and, if an address is presented to His Majesty by either House of Parliament, within the next subsequent thirty days on which the House has sat next after any such Rule is laid before it, praying that the Rule be annulled, His Majesty in Council may annul the Rule, and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

(3) If the Rules require a declaration to be made for any purpose, a person who makes such declaration, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanour.

15. In this Act, unless the context otherwise Definitions. requires—

The expression “Court” means the High Court and, as respects trusts within its jurisdiction, the County Court.

The expression “letters of administration” means letters of administration of the estate and effects of a deceased person, whether general or with a will annexed, or limited either in time or otherwise.

The expression “trust” includes an executorship or administratorship; and the expression “trustee” shall be construed accordingly; and the expression “trust property” shall include all property in the possession or under the control wholly or partly of the Public Trustee by virtue of any trust.

The expression “private trustee” means a trustee other than the Public Trustee.

The expression “expenses” includes costs and charges.

The expression “prescribed” means prescribed for the time being by Rules under this Act.

Other expressions have the same meaning as in The Trustee Act, 1893.

“*As respects trusts within its jurisdiction, the County Court.*”—The jurisdiction of the County Courts extends to trust property of not exceeding £500 in value. Other expressions have the same meaning as in The Trustee Act, 1893, thus, for instance, “property,” “securities,” “stock,” “transfer,” are all defined in that Act, and will have the same meaning in this one.

“*Letters of administration*” include—

- (i.) General letters of administration of the estate and effects of a deceased person.
- (ii.) Letters of administration with the will annexed.
- (iii.) Letters of administration limited in time.
- (iv.) Letters of administration limited otherwise.

Commence-
ment of
Act.

16. This Act shall come into operation on the First day of January, One thousand nine hundred and eight.

Short title
and extent.

17. (1) This Act may be cited as “The Public Trustee Act, 1906.”

(2) This Act shall not extend to Ireland or Scotland.

APPENDIX I.

PART A.

RULES OF THE SUPREME COURT (TRUSTEE ACT), 1893.

ORDER LIV_B.—PROCEEDINGS UNDER THE TRUSTEE ACT, 1893.

1. *Chancery Division*.—All proceedings in the High Court commenced under The Trustee Act, 1893 (in this Order called “the Act”), shall be assigned to the Chancery Division of the Court.

Rule 1.—The Trustee Act, 1893, has been amended by The Trustee Act, 1893, Amendment Act, 1894, but these Rules are obviously equally applicable to applications thereunder. As to the jurisdiction of the Chancery Division see Rules of Supreme Court, Order V., Rule 9.

2. *Petition*.—All applications under the Act may be made by petition except as otherwise provided under Order LV.

Rule 2.—Applications under Rules of Supreme Court, Order LV., cover by far the larger number of the applications possible under The Trustee Act, 1893; hence these will, as a rule, be by originating summons, the remainder by petition. The more important and numerous applications fall under Rules of Supreme Court, Order LV., Rule 13 (*a*), as to which see *post*, Appendix II., Forms 5 to 20. *In re Knox's Trusts* (1895, 1 Ch. 539) is a case where a petition was presented.

3. *Section 44*.—An application under Section 44 of the Act may be made by the trustees authorised to dispose of the land as in the said section mentioned.

Rule 3.—Section 3 of The Trustee Act, 1893, Amendment Act, 1894, has amended Section 44 by inserting the words “or other person” after the word “trustee” in the first two places where that word occurs in Section 44. This amendment preserves the right mortgagees had under Section 2 of 25 & 26 Vict. c. 108, which had apparently been put an end to by the repeal of that section (see *ante*, note on Section 44).

The application under this section not being one of those contemplated by the Rules of Supreme Court, Order LV., and Order LV., Rule 13 (*a*)

(unless it can be held to come under Order LV., Rule 2 (13) and (14), which does not appear to be the case), should be by petition, not summons (see *post*, Appendix II., Form 21, and note thereto).

Section 44 deals with the power of the Court to sanction the sale of lands and minerals separately where "a trustee or other person is for the time being authorised to dispose of land by way of sale."

For a case under this section see *re Skinner* (1896, W. N. 68), where an order was made authorising the separate sale of the copyhold interest in surface and minerals under settled copyhold land. Service on a dissenting beneficiary out of the jurisdiction was dispensed with.

The petition must be served not only on tenants for life, but also on their children, if entitled in remainder (*in re Hardstaff*, 1899, W. N. 256), and see *ante*, pp. 219 and 220.

4. *Lodgment under Section 42.*—(1) Where a trustee desires to make a lodgment in Court under Section 42 of the Act he shall make and file an affidavit intituled "In the matter of the trust (described so as to be distinguishable) and of the Act," and setting forth—

- (A) A short description of the trust and of the instrument creating it;
- (B) The names of the persons interested in and entitled to the money or securities, and their places of residence, to the best of his knowledge and belief;
- (C) His submission to answer all such inquiries relating to the application of the money or securities paid into Court as the Court or Judge may make or direct;
- (D) The place where he is to be served with any petition, summons, or order, or notice of any proceeding relating to the money or securities:

Provided that if the fund consists of money or securities being, or being part of, or representing a legacy or residue to which an infant or person beyond the seas is absolutely entitled, and on which the trustee has paid the legacy duty, or on which no duty is chargeable, the trustee may make the lodgment (without an affidavit) on production of the Inland Revenue certificate in manner prescribed by the Supreme Court Funds Rules for the time being in force.

(2) Where the lodgment in Court is made on affidavit—

- (A) The person who has made the lodgment shall forthwith give notice thereof, by prepaid letter through the post, to the

several persons whose names and places of residence are stated in his affidavit as interested in or entitled to the money or securities lodged in Court;

- (B) No petition or summons relating to the money or securities shall be answered or issued unless the petitioner or applicant has named therein a place where he may be served with any petition or summons, or notice of any proceeding or order relating to the money or securities or the dividends thereof;
- (c) Service of any application in respect of the money or securities shall be made on such persons as the Court or Judge may direct.

Rule 4, Sub-rule 1.—Section 42 of the Act deals with the payment into Court by trustees of moneys in their hands (see *ante*, p. 207). This may be either on affidavit or without one, according to the character of the fund in the trustees' hands. For the practice generally on "Payment in" see *Daniell's Chancery Practice*, 6th ed., pp. 2065 to 2085.

1. *Payment in on affidavit.*—For Form of Affidavit when payment in is so made see Appendix II., Form 12. It will be issued in the Chancery Division.

Where the money represents a legacy or residue to which an infant or person beyond the sea is absolutely entitled, an affidavit is not necessary.

Rules 41 and 42 of The Supreme Court Funds Rules, 1905 (*post*, pp. 343 *et seq.*), should be read in connection with the Rules. By reason of the definition of "funds" or "funds in Court" in those Rules, the funds which can be lodged in Court include—(1) Annuities or stocks in the books of the Bank of England, or any Government or Parliamentary securities standing in the names of trustees or legal personal representatives of deceased persons; and (2) Any securities of any company having a registered office in England.

The affidavit may be written or printed; the lodgment schedule must be printed (see Supreme Court Funds Rules, 1905, Rules 5 and 41). Should it be necessary to amend the Schedule, it can be done by filing another affidavit with a revised schedule.

Any one of several trustees may make the affidavit (*Anon.*, 1 Jur., N. S. 974), though it is better for all to join.

The application should be served personally. If it cannot, then service at the address can be ordered.

Where money has been paid in under the proviso to the section the trustee need not be served with notice of any application relating thereto.

2. *Payment in not on affidavit.*—The proviso to the Rule deals with payment in in cases similar to those formerly made under Section 32 of The Legacy Duty Act, 1796 (see note on this *ante*, p. 208). These are made without an affidavit (see Supreme Court Funds Rules, 1905, Rules 41 and 74).

5. Order LV., Rule 13 (a), is hereby repealed, and the following Rule shall be substituted therefor:—

ORDER LV., Rule 13 (a).

Summons.—Any of the following applications under The Trustee Act, 1893, may be made by summons:—

- (A) An application for the appointment of a new trustee with or without a vesting or other consequential order.
- (B) An application for a vesting order, or other order consequential on the appointment of a new trustee, whether the appointment is made by the Court or Judge, or out of Court.
- (C) An application for a vesting or other consequential order in any case where a judgment or order has been given or made for the sale, conveyance, or transfer of any land or stock [or the suing for or recovering of any chose in action].¹
- (D) An application relating to a fund paid into Court in any case [coming within the provisions of Rule 2 of this Order].¹

Rule 5.—Applications under this Rule are fully dealt with in the notes to Section 27 of The Trustee Act, 1893, and following sections.

As to applications for new trustees and otherwise of policy moneys under The Married Women's Property Act, 1870, see *re Atkinson's Policy Trusts* (13 R. 285); *re Smith's Policy Trusts* (33 L. J., N. S. 187), as to mode of application; *re Howson's Policy Trusts* (1885, W. N. 213), as to number of trustees required. The application may be by petition (see *re Atkinson's Policy Trusts* cited above), but can be by summons (*re Smith's Policy Trusts, ante*).

In *re Kuyper's Policy Trusts* (1899, 1 Ch. 38) North, J., following decisions of Chitty, J., and Stirling, J., held that the petition need not be entitled under the Act of 1882 as well, but only "In the matter of the Trusts of [the Policy] and In the matter of The Married Women's Property Act, 1870."

The reference in (D) of this Order is to Order LV., Rule 2, of the Rules of the Supreme Court (*q.v.*).

Order XXII., R. 12 (a) of the Rules of the Supreme Court is of importance as regards these applications. It is in the following terms:—

"Every petition or summons for dealing with moneys or securities in Court chargeable with any duty payable to the Revenue, or the dividends on such securities, shall contain a statement whether such duty has or has not been paid."

¹ The words in brackets were added by Rule 6 of the Rules of the Supreme Court, February, 1895.

6. *Repeal.*—The following Rules are hereby repealed:—

Order LII., Rules 19, 20, 21, 22.

Order LV., Rule 2 (4), (5), (8).

Chancery Funds Amended Orders, 1874.—Orders 5, 6, 7, 8, 9; and 10.

7. *Citation.*—These Rules may be cited as “The Rules of The Supreme Court (Trustee Act), 1893,” and each Rule may be cited separately according to the heading thereof with reference to the Rules of the Supreme Court, 1883. They shall come into operation on the First day of January, 1894.

(Signed)	HERSCHELL, C.	F. H. JEUNE, P.
	COLERIDGE, C. J.	A. L. SMITH, L. J.
	ESHER, M. R.	JOSEPH W. CHITTY, J.
	EDWARD E. KAY, L. J.	ARTHUR CHARLES, J.

5th December, 1893.

APPENDIX I.

PART B.

SUPREME COURT FUNDS RULES, 1905.¹

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¹ Some of these Rules refer to payments into Court other than under The Trustee Act, 1893, but they are retained for convenience of reference.

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18. When dealings by the Paymaster are made contingent upon the execution of particular documents.
19. Periodical payments.
20. Legacy, estate, and succession duty.
21. Payment, transfer, or delivery to trustees, &c.
22. Draft Schedule to be prepared by party having conduct of proceedings.
23. Orders, how drawn up and entered.
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97. Office copy of Schedules, &c., to be sent to Audit Office.
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102. Transfer of small balances to a special account.
103. Titles of accounts not to exceed thirty-six words.
104. Outstanding cheques of late Accountant-General.
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APPENDIX.

FORM NO. 1.

Lodgment Schedule referred to in Rule 5, and specimen Lodgment Schedules.

FORM NO. 2.

Payment Schedule referred to in Rule 6, and specimen Payment Schedules.

FORM NO. 3.

Combined Lodgment and Payment Schedule referred to in Rule 8.

FORM NO. 4.

Certificate of ascertained Sums referred to in Rule 11.

FORM NO. 5.

Certificate of Taxed Costs referred to in Rule 12.

FORM NO 6.

Certificate of Execution of Documents referred to in Rule 18.

FORM NO. 7.

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FORM NO. 8.

Request for Lodgment of Money in Chancery Division referred to in Rule 30.

FORM NO. 9.

Request for Lodgment or Transfer of Securities in Chancery Division referred to in Rule 30.

FORM NO. 10.

Request for Lodgment in Chancery Division under Orders XXII. and XXXI. referred to in Rule 30.

FORM NO. 11.

Request for Lodgment in King's Bench Division referred to in Rule 32.

FORM NO. 12.

Request for Lodgment in Probate, Divorce, and Admiralty Division referred to in Rule 34.

FORM NO. 13.

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FORM NO. 14A.

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FORM NO. 14C.

Certificate as to Person Entitled to Money lodged "as security for costs" referred to in Rule 44 (c).

FORM NO. 15.

Declaration (referred to in Rule 62) to be made by a relative of a person who has died intestate when letters of administration have not been taken out and when the total assets of the estate of the deceased have not exceeded the sum of £100.

FORM NO. 16.

Request for Lodgment without an affidavit under The Trustee Act, 1893, and Certificate of Commissioners of Inland Revenue to be furnished therewith, referred to in Rule 41 (a).

FORM NO. 17.

Declaration by executor or administrator of a person entitled to payment. Sums not exceeding £10, Rule 62 (d).

FORM NO. 18.

Application to Paymaster-General for transmission to County Court of money paid into High Court in action or matter remitted or transferred to County Court referred to in Rule 44.

I, the Right Honourable Hardinge Stanley, Earl of Halsbury, Lord High Chancellor of Great Britain, with the concurrence of the Lords Commissioners of His Majesty's Treasury, do hereby, in pursuance of the powers contained in "The Court of Chancery (Funds) Act, 1875," "The Supreme Court of Judicature Act, 1875," "The Supreme Court of Judicature (Funds, &c.) Act, 1883," "The Supreme Court of Judicature (Procedure) Act, 1894," and of every other power enabling me in that behalf, make the following Rules:—

I. OPERATION OF RULES AND INTERPRETATION OF TERMS.

1. *Commencement of Rules and Short Title.*—These Rules shall come into operation on the 24th day of October, 1905, and may be cited as "The Supreme Court Funds Rules, 1905."

2. *Repeal of existing Rules.*—All other Rules or General Orders prescribing the mode of dealing with funds in Court, and containing any provisions relating to funds in Court inconsistent with these Rules, are hereby revoked and these Rules substituted therefor, as from the same day: Provided that the Rules hereby revoked shall continue to apply to Orders made but not fully acted upon before these Rules come into operation, so far as is indispensable for the purpose of duly giving effect to such Orders.

3. *Interpretation of Terms.*—In these Rules and in Orders as herein prescribed and defined terms shall have the same meaning as the same terms are defined to have in the Rules of the Supreme Court, 1883, and the following words shall have the several meanings hereby assigned to them: viz. :—

“Audit Office” means the Office of the Comptroller and Auditor General in which the audit of the accounts of the Pay Office is conducted:

“The Bank” means the Bank of England, or the Governor and Company of the Bank of England, and includes for District Registry purposes the branch banks of the Bank of England in Liverpool and Manchester:

Otherwise, “a bank” refers to and includes a banker or a member of a banking company or partnership making returns under the 21st section of the Act 7 & 8 Vict. cap. 32: or a banking company registered under the Companies Acts:

“Brokerage,” unless an Order otherwise directs, includes Stamp Duties under the Stamp Acts for the time being in force, and the Registration Fee, if any, chargeable by the Bank, or by a company, on the transfer of securities pursuant to a purchase or sale:

“Carry over,” in relation to a fund in Court, means to transfer the fund, or any part thereof, from one account to another in the books of the Pay Office:

“Company” includes a corporation or body corporate:

“Court” means the Supreme Court of Judicature or the High Court of Justice or any Division thereof, or the Court of Appeal:

- “ Direction ” means any cheque, draft, or authority issued to the Bank of England, or to any other company, which relates to money or securities standing or to be placed to the Pay Office Account; and includes any authority for the payment of money through the agency of the Post Office :
- “ Duty,” in relation to funds in Court, includes any Estate Duty, Settlement Estate Duty, Probate Duty, Account Stamp Duty, Legacy Duty, or Succession Duty; also the Duties of Income Tax, and any other Duty payable to the Commissioners of Inland Revenue :
- “ Funds ” or “ funds in Court ” means any money, Government Stock or Annuities, or other securities, including stocks and shares, or any part thereof standing or to be placed to the Pay Office Account in the books of the Bank of England or of any other company; and includes boxes and other effects :
- “ Government Securities ” means Two and a half per centum Consolidated Stock (hereinafter called Consols), or $\text{£}2\frac{3}{4}$ per centum Annuities, or $\text{£}2\frac{1}{2}$ per centum Annuities, or Local Loans Stock :
- “ Interest,” when mentioned in the Schedule to an Order, means, unless otherwise specified, the dividends and interest on all the funds referred to in the heading thereof :
- “ Ledger credit ” means the title of the cause or matter and the separate account (if any) opened or to be opened, under an Order or otherwise, in the books of the Paymaster, to which any funds are credited or to be credited :
- “ Lodge in Court ” means pay or transfer into Court, or deposit in Court :
- “ Lodgment in Court ” means payment or transfer into Court, or deposit in Court :
- “ Master’s certificate ” or “ certificate of a Master ” means a certificate made by a Master of the Supreme Court attached to the Chancery Division, or to the King’s Bench Division, of the High Court, respectively, or by a District Registrar of the Court in Liverpool or Manchester acting as a Master :

- “National Debt Commissioners” means the Commissioners for the reduction of the National Debt:
- “Order” means an Order of the Supreme Court of Judicature or of the High Court of Justice or Court of Appeal, whether made in Court or in Chambers, and an Order in Lunacy, and includes a judgment or decree, and a report of a Master in Lunacy, confirmed by fiat, and thereby receiving the operation of an Order under the Lunacy Regulation Acts for the time being in force, or any general Order made thereunder; and a certificate of a Master in Lunacy to be acted on without further Order; and includes the Schedule or Schedules to an Order:
- “Paymaster” means His Majesty’s Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature, or the Assistant Paymaster-General for Supreme Court business for the time being deputed by the Paymaster-General to act on his behalf for such business:
- “Pay Office Account” means the Account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature:
- “Pay Office” means the Paymaster-General’s Office for business of the Supreme Court of Judicature:
- “Person” includes any body of persons corporate or unincorporate:
- “Registrar” means a Registrar of the Chancery Division or of the Probate, Divorce, and Admiralty Division of the High Court of Justice, and a Registrar in Bankruptcy; also the District Registrars of the Court in Liverpool and Manchester; and includes the officer whose duty it may be, under any General Orders in Lunacy for the time being in force, to draw up and issue Orders in Lunacy:
- “Statutory declaration” means a declaration under The Statutory Declarations Act, 1835 (5 & 6 Wm. IV. c. 62), subject to the provisions of 44 & 45 Vict. c. 41, s. 68:
- “Taxing Officer” refers to and includes the Master of the Supreme Court or other person whose duty it is to tax costs in any Division, or Department of the Supreme

Court, or in Lunacy; and in actions and matters originating in the District Registry of Manchester or Liverpool, the District Registrar:

“Title of the cause or matter” means the short title of the cause or matter, with the reference to the Record:

Words importing males include females:

Words importing the singular number only include the plural number, and words importing the plural number only include the singular number.

II. PREPARATION OF ORDERS IN THE CHANCERY DIVISION AND IN LUNACY TO BE ACTED UPON BY THE PAYMASTER, AND PARTICULARS RELATING THERETO.

4. *Application of Rules 5 to 27 inclusive.*—The Rules next following, numbered severally 5 to 27 inclusive, shall apply only to causes and matters in the Chancery Division, and (so far as the same are applicable) to matters in Lunacy.

5. *Order for funds to be brought into Court to have a Lodgment Schedule.*—Every Order which directs funds to be lodged in Court shall have annexed thereto as part thereof a Schedule, to be styled the Lodgment Schedule, which shall be headed with the title of the cause or matter, the date of the Order, and the title of the ledger credit to which the funds are to be placed; and shall set out in a tabular form:—

- (a) The name, or a sufficiently identifying description of the person by whom the funds are to be lodged:
- (b) The amount, if ascertained, and the description of the funds.

The authority for a lodgment of the proceeds of the sale of any property which has been directed by an Order to be sold, and for a lodgment of Receivers' balances, may be a Lodgment Schedule signed by a Master; and such Lodgment Schedule shall operate in the same manner as a Lodgment Schedule annexed to an Order.

The Lodgment Schedule shall be prepared upon a printed form according to the Form No. 1 in the Appendix to these Rules, and as nearly as may be in the manner shown by the specimen

entries appended to such Form; and may direct the investment and accumulation of the funds or the dividends or interest on the funds to be lodged; and may also direct that the funds shall not be dealt with without notice to the purchaser or other person named in such Schedule.

6. *Order for funds to be paid out, &c., to have a Payment Schedule.*— Every Order which directs funds in Court to be sold, transferred, or delivered, or carried over to any other ledger credit than that to which the same are standing, or to be otherwise dealt with by the Paymaster, shall have annexed thereto as part thereof a Schedule, to be styled the Payment Schedule, which shall be headed with the title of the cause or matter, the date of the Order, and the ledger credit to which the funds dealt with are standing. The Payment Schedule shall contain as part of the heading a statement of the funds with which, or with part of which, or with the interest or dividends on which the Paymaster is to deal, describing them if already in Court as they appear in the Paymaster's Certificate, or if not already in Court stating the source from which they are to be derived.

The Payment Schedule shall set out in a tabular form:—

- (a) The name of each person to whom a payment, transfer, or delivery of any funds is to be made: unless the name is to be stated in a Certificate of a Master, or a Master in Lunacy, or a Taxing Officer, or unless such payment, transfer, or delivery is to be made to trustees or other persons in succession, or to representatives when no probate or letters of administration shall have been taken out at the date of the Order.

The name shall be in full (the Christian name preceding the surname) except in the case of a payment to a firm, when the business title of such firm may be stated; and when a payment is to be made to a person named in the Schedule, the address (if known at the time of preparing the Schedule) of such person, or in the case of a payment to two or more persons jointly, of one of such persons, shall be stated in the Schedule.

When a payment, transfer, or delivery of any funds is to be made to a woman, her description, whether spinster, married woman, or widow, shall be set forth, and in the case of a married woman, when such payment,

transfer, or delivery is to be made to her otherwise than for her separate use, or upon her receipt, it shall be so stated.

When a payment is directed to be made during the minority of an infant, the date of birth shall be stated.

- (b) The title of the ledger credit or separate account to which any funds are to be carried over.
- (c) The amount and description of the funds in each case to be paid, sold, transferred, delivered, or carried over, so far as the same can be ascertained at the date of the Order, except in the case of aliquot parts of an ascertained amount; and where the actual amounts to be dealt with cannot be ascertained at the date of the Order, and are not to be subsequently ascertained by any means provided for by the Order or by these Rules, the aliquot parts to be dealt with:
- (d) The nature and necessary particulars of any other dealings with such funds by the Paymaster.

In the body of the Schedule short descriptions may be used, and it shall not be necessary to add that the specific amounts dealt with form part of the larger amount of any like funds mentioned in the heading.

The Payment Schedule shall be prepared upon a printed form according to the Form No. 2 in the Appendix to these Rules, and as nearly as may be in the manner shown by the specimen entries appended to such Form.

7. *When a separate account is opened.*—When funds in Court are by an Order directed to be carried over to a separate account, the title of the ledger credit to be opened for the purpose shall, unless the Order otherwise directs, commence with the title of the cause or matter to which such funds are standing.

8. *When both a Lodgment and Payment Schedule to be annexed.*—Every Order which directs or authorises the lodgment of funds in Court and also deals with such funds or any part thereof, or with any funds already in Court to the same ledger credit, shall have annexed thereto as part thereof a combined Lodgment and Payment Schedule, in the Form No. 3 in the Appendix to these Rules.

9. *Separate Schedule for each ledger credit.*—When funds to be lodged in Court under an Order are by the same Order directed to be placed to two or more ledger credits, separate Lodgment Schedules shall be made out for such respective ledger credits; and when funds standing to two or more ledger credits are dealt with by the same Order, separate Payment Schedules shall be made out for such ledger credits respectively.

10. *Instructions to Paymaster to be solely contained in Schedule.*—The Lodgment and Payment Schedules, respectively, shall contain the whole of the instructions intended by the Orders of which they severally form part to be acted upon by the Paymaster, and all particulars necessary to be known by him, so far as such instructions and particulars are capable of being expressed at the date of the Order, and the Paymaster shall only be responsible for giving effect to such instructions so intended to be given by the Order as are expressed in the Lodgment or Payment Schedule thereto. The instructions and particulars contained in a Lodgment or Payment Schedule shall not be set forth in the body of the Order, but shall only be therein referred to as appearing by the Schedule, unless for any special cause it shall, in the opinion of the Judge by whom the Order is made, or the Registrar by whom the same is drawn up, be necessary to set forth some part of such instructions or particulars both in the body of the Order and in the Schedule.

11. *When sums are to be ascertained by certificate, &c.*—When an Order directs any sums to be ascertained by the certificate of a Master, or Taxing Officer, or a Master in Lunacy, or in any other manner, and to be afterwards dealt with by the Paymaster, it shall be so expressed in the Payment Schedule; and such certificate or other authority, or a duplicate or an office copy of the same, or of so much thereof as shall be necessary, shall be sent to the Paymaster. Such certificate shall be printed or partly printed, and as nearly as may be in the Form No. 4 appended to these Rules.

12. *Certificate for payment of taxed costs.*—When an Order directs payment, out of a fund in Court, of any costs directed to be taxed by a Taxing Officer, the Taxing Officer shall state in his certificate (as in the case of a Payment Schedule under Rule 6) the full name and address of the person to whom such costs are payable. Such certificate shall be printed, or partly printed, and

as nearly as may be in the Form No. 5 appended to these Rules, and a duplicate or an office copy thereof shall be sent to the Paymaster.

When a Taxing Officer makes an interim certificate directing costs to be paid out of funds in Court, under the provisions of the Rules of the Supreme Court (Order LXV., Rule 27, Regulations 17 (b) or 39), it shall be so described therein; but otherwise a Taxing Officer's certificate shall be held to include all the costs directed by the Order under which the certificate is made, to be taxed and paid out of the funds in Court.

13. *Interest, how ascertained.*—When interest not directed to be certified is payable in respect of any money in Court directed by an Order to be dealt with by the Paymaster, there shall be stated in the Payment Schedule the rate per centum at which, and (if the day to which interest is payable can be fixed by the Order) the day (inclusive) to which such interest is to be computed, and the amount of such interest.

Such interest, if for less than one year, shall be computed by the number of days, and not by any other period.

14. *When the day to which interest is payable cannot be ascertained.*—If the day to which interest is payable cannot be fixed by the Order, the day from which (exclusive) such interest is to be computed shall (except in the case of a computation of subsequent interest in the certificate of a Master, or a Master in Lunacy) be stated in the Payment Schedule, and such interest may be directed to be computed and certified by a Master, or a Master in Lunacy, or (where the computation is dependent upon the taxation of costs) by a Taxing Officer.

15. *When interest certified by a Master, &c.*—Interest certified by a Master, or a Master in Lunacy, or a Taxing Officer, may, unless the Order otherwise directs, be computed to a day subsequent to the date of the certificate and to be named therein as the day for payment, so as to allow a reasonable time for doing all necessary acts to enable the payment to be made; and the Master, or Master in Lunacy, or Taxing Officer, may, if he thinks fit, require a statement in writing of such computation, authenticated by the signature of the solicitor having the carriage of the Order, to be produced before preparing the certificate, but no affidavit verifying such computation shall be required.

16. *When interest to be ascertained by affidavit.*—When the day for payment is not fixed by the Order, and the interest is not directed to be certified as in the last preceding Rule mentioned, such interest shall, without any provision in the Order for that purpose, be ascertained by an affidavit, or by a statutory declaration, in which case such interest shall be computed to a day (inclusive) to be named in such affidavit or declaration as the day for payment; which day shall not be more than fourteen days after the day of swearing such affidavit, or making such declaration; and such affidavit or declaration shall be a sufficient authority to the Paymaster to pay or apply the amount of interest so ascertained in the manner directed by such Order.

17. *Deduction of income tax from interest, and payment to the Revenue.*—(a) In every case in which interest is to be computed, income tax (if any) shall, in making such computation, be deducted therefrom at the rate in force at the time of payment of such interest (unless the Order otherwise directs); and if income tax has been deducted, it shall be so stated, together with the total amount thereof, in every such affidavit or declaration as is mentioned in Rule 16.

(b) Unless the Court shall otherwise direct, or a certificate is produced from the Commissioners of Inland Revenue that no claim on the fund in Court is made by them in respect of such income tax, the Paymaster shall transfer the amount of the income tax which has been so deducted to the proper account of the said Commissioners at the Bank, under the provisions of Rule 52.

18. *When dealings by the Paymaster are made contingent upon the execution of particular documents.*—Whenever the dealing by the Paymaster with funds in Court is, by an Order, made contingent upon the execution of some document, it shall be so expressed in the Payment Schedule. The execution of such document shall be certified by a Master, or by a Master in Lunacy: Provided that in the case of a document in existence at the date of the Order and identified in the Schedule, or by the signature of a Master, or a Master in Lunacy, in the margin of the ingrossment of the document, the execution may be directed to be verified by affidavit. Such certificate or affidavit shall state the particular amount of funds to be dealt with, and such certificate shall be printed, or partly printed, and as nearly as may be in the Form No. 6 appended to these Rules.

19. *Periodical payments.*—When an Order directs the payment of dividends, annuities, or other periodical payments to be made by the Paymaster, there shall be stated in the Payment Schedule (except in the case of dividends payable as they accrue due) the time when the first of such payments and all subsequent periodical payments, whether quarterly, half-yearly, yearly, or otherwise, are to be made.

20. *Funds subject to duty.*—When an Order directs the payment, transfer, or delivery of funds in Court, in respect of which duty shall be payable to the Revenue, and does not direct the payment of such duty, it shall be stated in the Payment Schedule that such payment, transfer, or delivery is subject to duty, and in such case the Paymaster is to have regard to the circumstance that such duty is payable; and when by an Order funds in respect of which such duty may be chargeable are directed to be invested, carried over, or placed to a separate account, the words "subject to duty" shall be added in the Schedule to the separate account directed to be opened.

21. *Payment, transfer, or delivery to trustees, &c.*—When a person to whom payment, transfer, or delivery of funds in Court is directed is entitled thereto as real estate, or as trustee, executor, or administrator, or otherwise than in his own right or for his own use, the fact that he is entitled to the same as real estate, or the character in which he is so entitled, shall be stated in the Payment Schedule to the Order, or in the certificate of a Master, or of a Taxing Officer, or of a Master in Lunacy.

22. *Draft Schedule to be prepared by party having conduct of proceedings.*—When an Order is made dealing in any way with funds in Court or to be brought into Court in accordance with minutes agreed upon by the parties, the solicitor of the party whose duty it is to procure the Order to be drawn up and entered shall prepare and lodge with the Registrar or other proper officer, for his consideration, draft Lodgment and Payment Schedules, as the case may be, in the same form as the Lodgment and Payment Schedules to an Order, and containing the particulars, so far as the same have been ascertained, which are required by these Rules to be contained in the Lodgment and Payment Schedules of the Order.

23. *Orders, how drawn up and entered.*—Every Order which is to be acted upon by the Paymaster shall be drawn up and entered by the Registrar, unless the Judge otherwise directs, and shall either be wholly printed, or, in cases in which printed forms can be used, may be partly in print and partly in writing.

24. *Copy of Schedules for Paymaster.*—When any Order to be acted upon by the Paymaster is left for entry, a further copy of the Schedules thereto, initialled by the Registrar, and stamped with his official seal on every leaf, shall be left therewith. Such further copy of the Schedules shall be examined and sealed and marked with a reference to the Order as entered, and shall be sent to the Paymaster.

The name of the solicitor having the carriage of the Order shall be indorsed thereon.

A copy of a Lodgment Schedule signed by a Master (under Rule 5 of these Rules) shall be sent by him to the Paymaster.

A schedule to an Order in Lunacy shall be sufficiently authenticated by the Seal of the Masters' Office, and by the signature of their Chief Clerk, or of such other officer as the Masters shall direct.

25. *Paymaster to act on copy of Schedules.*—The copy of the Schedules to an Order sent to the Paymaster pursuant to the last preceding Rule shall be the Paymaster's authority for giving effect to the several operations directed therein. No part of the Order other than the Schedules thereto shall be sent to the Paymaster.

26. *Additional copies of printed Orders.*—Additional printed copies of Orders or Schedules may be made according to the requirements of the parties or their solicitors, and when such Orders have been entered, such additional copies shall be transmitted to the Central Office, and, upon being duly completed and signed or certified by the proper officer, may be issued as office or certified copies.

27. *Amendment of accidental errors in printed Orders.*—Clerical mistakes or errors, or accidental omissions in printed Orders, may be amended in writing: Provided that no amendment shall be made in any Order to provide for a new state of circumstances arising after the date of the Order; nor shall any Order be amended for the purpose of extending the time thereby limited for making any lodgment of funds in Court.

When any such amendment is made in a Schedule to an Order, the copy of such Schedule to be sent to the Paymaster under Rule 24 (if not already so sent) shall be amended and sealed in the manner above provided. If such copy has prior to the amendment been sent to the Paymaster, a notification of the amendment, signed by a Registrar, shall be delivered to the solicitor having the carriage of the Order, who shall leave such notification at the Pay Office, and produce therewith the amended Order; and the Paymaster shall note such amendment on his copy of the Schedule, and act in accordance therewith.

III.—FORM OF ORDERS FOR THE PAYMENT OF MONEY IN THE KING'S BENCH, AND PROBATE, DIVORCE, AND ADMIRALTY DIVISIONS.

28. *Form of Orders in King's Bench, and Probate, Divorce, and Admiralty Divisions.*—In the King's Bench, and Probate, Divorce, and Admiralty Divisions, an Order for the payment of money to be acted upon by the Paymaster shall be in the Form No. 7 in the Appendix to these Rules, or as nearly as may be, and shall be signed by a Master, or a Registrar, or by an Official Referee, or by a Clerk of Assize, or an Associate, as the case may be.

IV.—LODGMET OF FUNDS IN COURT.

29. *All funds lodged in Court to be placed to the account of the Paymaster-General.*—All funds to be lodged in Court shall be paid or deposited at the Bank of England (Law Courts Branch), or in the case of funds to be lodged in Court in the District Registries of the High Court in Liverpool or Manchester at the branch banks of the Bank of England in Liverpool or Manchester, and placed in the books of the Bank to the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature; and the Bank shall cause a receipt to be given to the person making the payment or deposit.

All securities to be transferred into Court shall be transferred to the said account in the books of the Bank or other company in whose books such securities are registered.

Any effects brought to the Bank to be so deposited in Court shall be deposited in locked boxes, or in such other secure manner as shall satisfy the Bank; and before taking custody of a box, the agent, or other officer acting on behalf of the Bank, may, at his discretion, require an inspection of its contents in presence of the person depositing it.

The direction of the Paymaster for the lodgment of any funds, issued under these Rules, and signed by such officers as may be prescribed or approved by the Treasury, shall be the necessary and sufficient evidence of the Order quoted therein to authorise the person named therein to lodge the funds named therein to the said account.

Cheques for lodgment of money are to be made payable to the Bank of England, for the Pay Office Account.

30. *Manner of lodgment of funds in Chancery Division; and particulars to be stated in request.*—In the Chancery Division a direction for a lodgment directed by an Order, or in a Lodgment Schedule signed by a Master (in the case of purchase moneys or receivers' balances), shall be issued by the Paymaster upon receipt of a copy of the Lodgment Schedule; and a direction for a lodgment under The Trustee Act, 1893, shall be issued by him upon receipt of an office copy of the Schedule mentioned in Rule 41, or upon receipt of the request and certificate of the Commissioners of Inland Revenue mentioned in that Rule.

The Paymaster, on a request to that effect signed by or on behalf of a person directed by an Order to make a lodgment, may issue a separate direction for lodgment of a part of the sum so directed to be lodged. Provided that the Paymaster shall not further deal, under such Order or under these Rules, with the amount so lodged until the full lodgment directed by the Order has been made; and provided that such lodgment of part of a sum shall not affect or prejudice any liability, process, or other consequences which such person may have become subject to by reason of his default in not lodging the whole sum.

Directions for lodgments in the branch banks of the Bank of England in Liverpool or Manchester may be issued by the District Registrars of the Court in Liverpool and Manchester.

A lodgment of funds in Court not directed by an Order may be made upon a direction to the Bank or other Company, to be issued by the Paymaster on a request signed by or on behalf of the person desiring to make such lodgment: Provided that no such lodgment shall be placed in the Pay Office books to a separate account in a cause or matter (except to a Security for Costs account) unless an Order has directed such separate account to be opened.

The request for a direction under this Rule shall state the name of the person by or on whose behalf the funds are to be

lodged, the ledger credit in the Pay Office books to which the funds are to be placed, and the date of the authority or certificate (if any) in pursuance of which the funds are to be lodged.

In cases of funds to be lodged in pursuance of The Lands Clauses Consolidation Act, 1845, or of the Copyhold Acts, the further particulars required under Rules 39 and 40 shall be stated in the request. And when (otherwise than as hereinbefore provided) funds are lodged in Court in pursuance of an Act of Parliament, under which some specific authority is necessary for such lodgment, the request for a direction for lodgment shall contain a reference to such Act and authority, and the requisite authority shall be left at the Pay Office.

Except in the cases next mentioned, the request under this Rule shall be in the Forms No. 8 (for money) and No. 9 (for securities), in the Appendix to these Rules.

Lodgments under Orders XXII. and XXXI. of R. S. C., 1883.—When money is to be lodged under the provisions of Order XXII. of the Rules of the Supreme Court, 1883 (in any action brought to recover a debt or damages) or under the provisions of Rule 26 of Order XXXI. of the said Rules, the request shall be in the Form No. 10 in the Appendix to these Rules, and shall contain a statement of the circumstances under which the money is to be lodged, in such of the following terms as may be applicable to the case, viz. :—

- (a) When the money is to be lodged subject to the provisions of Rule 5 of Order XXII., a statement in the following terms :—“Paid in on behalf of defendant in satisfaction of claim of above-named [name of party],” (or “with defence setting up tender”).
- (b) When the money is to be lodged subject to the provisions of Rule 6 of Order XXII., a statement in the following terms :—“Paid in on behalf of defendant against claim of above-named [name of party], with defence denying liability.”
- (c) When the money is to be lodged under the provisions of Rule 26 of Order XXXI., a statement in the following terms :—“Paid in to security for costs account on behalf of [name of party].”

31. *Conditional lodgment of money at the Bank in urgent cases.*—When it is desired to bring money into Court in the Chancery

Division, whether under an Order or otherwise, without waiting the time necessary to obtain a direction for the Bank to receive such money, it may be lodged at the Bank to the credit of a Supreme Court Suspense Account (subject to being dealt with as hereinafter mentioned, and not otherwise), upon an application signed by the person desiring to lodge the same, or his solicitor, and addressed to the Bank, specifying the amount, and the title of the ledger credit to which it is desired to be lodged, and upon such lodgment being made one of the cashiers of the Bank shall give a certificate that the amount has been lodged to the credit of the said Suspense Account; and in every case the person making such lodgment, or his solicitor, shall forthwith request the direction of the Paymaster for the Bank to receive the money in the manner provided by the last preceding Rule, and shall leave such direction at the Bank for the purpose of having the money so previously lodged transferred to the Pay Office Account, and placed in the books of the Pay Office to the ledger credit mentioned in such direction.

32. *Manner of lodgment of funds in the King's Bench Division.*—In the King's Bench Division a lodgment of money to the Pay Office Account shall be made on presentation at the Bank (Law Courts Branch) of a request signed by or on behalf of the person desiring to make such lodgment. Such request for lodgment shall be in the Form No. 11 in the Appendix to these Rules, or as nearly as may be, and shall specify the title of the cause or matter to the credit of which the lodgment is to be placed, and shall also contain a statement of the circumstances under which the money is lodged in such of the following terms as may be applicable to the case: viz.—

- (a) When the money is to be lodged subject to Rule 5 of Order XXII. of the Rules of the Supreme Court, 1883, a statement in the following terms:—"Paid in on behalf of defendant in satisfaction of claim of above-named [*name of party*]," (or "with defence setting up tender").
- (b) When the money is to be lodged subject to Rule 6 of Order XXII. of the Rules of the Supreme Court, 1883, a statement in the following terms:—"Paid in on behalf of defendant against claim of above-named [*name of party*] with defence denying liability."

- (c) When the money is to be lodged under Rule 26 of Order XXXI. of the Rules of the Supreme Court, 1883, a statement in the following terms:—"Paid in to security for costs account on behalf of [name of party]."
- (d) When the money is to be lodged in pursuance of an Order or otherwise than as above specified, a statement of the nature and date of the authority under which the lodgment is made, as for instance:—"Paid in under Order dated the day of 19 ," or "Paid in on notice of appeal [in bankruptcy], dated the day of 19 ."

If the lodgment is made upon a notice or pleading, such notice or pleading must be produced at the Bank, and the receipt for the lodgment shall be given thereon; and if the lodgment is made in pursuance of an Order, such Order, or an office copy thereof, must be produced at the Bank by the person making the lodgment.

A lodgment of funds other than money shall be made upon a direction to be issued by the Paymaster upon receipt of a copy of the Order directing such lodgment.

33. *Lodgments under Orders XXII. and XXXI. to be distinguished in Pay Office books.*—In every case of a lodgment in the Chancery and King's Bench Divisions under the provisions of the said Orders XXII. and XXXI., as provided in the preceding Rules 30 and 32, the Paymaster shall cause an entry to be made in his books indicating the circumstances under which the money is stated to be lodged.

34. *Manner of lodgment of funds in Probate, Divorce, and Admiralty Division; such lodgments to be notified to Registrar.*—In the Probate, Divorce, and Admiralty Division a lodgment of funds to the account of the Paymaster shall be made upon presentation at the Bank (Law Courts Branch) of an authority signed by or on behalf of a Registrar. Such authority shall be issued upon a request signed by or on behalf of the person desiring to make such lodgment. The request shall specify the title of the cause or matter (which in Admiralty actions shall include the name of the ship), and any particulars of the lodgment which may be necessary, and shall be in the Form No. 12 in the Appendix to these Rules.

When the receipt of funds authorised to be lodged as above has been certified to the Paymaster by the Bank, the Paymaster shall cause a notification of the lodgment to be sent to the Registrar by whom or on whose behalf such lodgment was authorised.

35. *Requests and directions may be sent by post.*—A request or authority for the issue by the Paymaster of a direction for the lodgment of funds in Court may be sent to the Paymaster by post, and, if so desired by the person sending the same, the Paymaster shall send such direction by post to the address specified by such person.

36. *Persons may bring funds into Court in Chancery Division though time limited by Order has expired.*—A person directed by an Order in the Chancery Division to make a lodgment in Court shall be at liberty to make the same without further Order, notwithstanding the Order may not have been served, or the time thereby limited for making such lodgment may have expired; and if any further sum of money has by reason of such default become payable by such person for interest, or in respect of dividends, he shall be at liberty to lodge in Court such further sum upon a request as hereinbefore provided: Provided that any such subsequent lodgment shall not affect or prejudice any liability, process, or other consequences which such person may have become subject to by reason of his default in making the same within the time so limited.

37. *Upon receipt or transfer of funds, direction to be returned to Paymaster.*—When funds have been received by the Bank, and when securities have been transferred in the books of the Bank or any other company to the Pay Office account in accordance with a direction, the Bank or other company shall forthwith send such direction to the Paymaster, with a certificate thereon that the funds specified have been received or transferred as therein authorised, and (in the case of such other company) shall therewith send the stock or share certificate (if any) of the securities so transferred.

38. *Certificate of lodgment in Chancery Division to be filed.*—In the Chancery Division, when any direction or other authority for the lodgment of funds in Court is returned to the Paymaster, with a certificate thereon that the funds therein mentioned have been lodged, the Paymaster shall as soon as practicable file at the

Central Office a certificate of such lodgment, and shall therein state the ledger credit to which such funds have been placed in the books at the Pay Office; and an office copy of such certificate of the Paymaster shall be received as evidence of the lodgment.

Certificates or notifications of lodgments at the branch banks of the Bank of England in Liverpool and Manchester (in Chancery and Admiralty causes and matters) shall be transmitted by the Paymaster to the respective District Registrars, and shall be filed in the District Registries (instead of in the Central Office).

39. *When money is lodged under Act 8 Vict. c. 18, s. 69, disability to be stated.*—Money lodged in Court in the Chancery Division pursuant to the 69th section of The Lands Clauses Consolidation Act, 1845, in respect of lands in England or Wales, shall be placed in the books at the Pay Office to the credit of *Ex parte* the promoters of the undertaking, in the matter of the special Act (citing it), and some words shall be added in each case briefly expressive of the nature of the disability to sell and convey, by reason of which the money shall be so paid in, which particulars shall be stated in the request for the direction for the lodgment.

40. *Money lodged under the Copyhold Acts to be specially described.*—Money lodged in Court in the Chancery Division pursuant to the Copyhold Acts shall be placed in the books at the Pay Office to the credit of "*Ex parte* the Board of Agriculture and Fisheries," and of the particular manor in respect of which the money shall be so paid in; and in the request for a direction for the lodgment the name and locality of such particular manor shall be stated.

41. *Lodgments under The Trustee Act, 1893, and Life Assurance (Payment into Court) Act, 1896.*—(a) When a legal personal representative desires to lodge funds in Court, under The Trustee Act, 1893, without an affidavit, he shall leave with the Paymaster a request signed by him or his solicitor, with a certificate of the Commissioners of Inland Revenue; such request and certificate to be in the Form No. 16 in the Appendix to these Rules, with such variations as may be necessary, or, as regards such certificate, in such other form as shall from time to time be adopted by the said Commissioners with the consent of the Treasury. The money or securities so lodged shall be placed to the credit mentioned in such request.

(b) When a trustee or other person desires to lodge funds in Court under The Trustee Act, 1893, upon an affidavit, he shall annex to such affidavit a Schedule in the same printed form as the Lodgment Schedule to an Order, setting forth:—

(a) His own name and address:

(b) The amount and description of the funds proposed to be lodged in Court:

(c) The ledger credit in the matter of the particular trust to which the funds are to be placed:

(d) A statement whether duty (if chargeable) or any part thereof has or has not been paid:

(e) A statement whether the money or the dividends on the securities so to be lodged in Court, and all accumulations of dividends thereon, are desired to be invested in any and what description of Government securities, or whether it is deemed unnecessary so to invest the same.

An office copy of such Schedule is to be left with the Paymaster.

(c) Where a company desires to lodge money in Court under The Life Assurance Companies (Payment into Court) Act, 1896, there shall be annexed to the affidavit directed to be made by Order LIVc., Rule 1, of the Rules of the Supreme Court, or any substituted Rule, a Lodgment Schedule stating the title and address of the company, the amount of the money proposed to be lodged, and the ledger credit to which it is to be placed; such ledger credit shall be as follows, with any necessary variations:—

In the matter of the policy, No. of the Company.

An office copy of the schedule is to be left with the Paymaster.

On receipt by the Paymaster of any subsequent notice of claim transmitted by such company pursuant to their undertaking referred to in Sub-section (e) of the said Rule, he shall retain the same and make an entry thereof in his books; and on any certificate of the fund to which such notice refers he shall notify the name of the person giving such notice, and the date thereof.

The Paymaster shall also upon such request as is mentioned in Rule 100, and upon payment of the same fee as is payable for a transcript under that Rule, supply a copy of such notice.

42. *Credit to which proceeds of securities and dividends are to be placed.*—Any principal money or dividends received by the Bank in respect of securities standing to the Pay Office account shall

be placed in the books at the Pay Office, in the case of principal money to the credit to which the securities whereon such money arose were standing at the time of the receipt thereof, and in the case of dividends to the credit to which the securities whereon such dividends accrued were standing at the time of the closing of the transfer books of such securities previously to the dividends becoming due.

V. APPROPRIATION IN THE KING'S BENCH DIVISION OF MONEY
LODGED UNDER ORDER XIV.

43. *Appropriation of money lodged under Order XIV. of R. S. C., 1883.*—In the King's Bench Division, when a defendant has lodged money in Court under Order XIV. of the Rules of the Supreme Court, 1883, as a condition of liberty to defend, and desires to appropriate the whole or any part of such money to the whole or any specified portion of the plaintiff's claim pursuant to Rule 11 of Order XXII. of the said Rules, he or his solicitor shall leave at the Pay Office a notice of such appropriation in the Form No. 13 in the Appendix to these Rules, specifying the title of the cause or matter to the credit of which the money is standing, the date of the Order under which the money was lodged in Court, and the amount to be appropriated; and whether so appropriated, (a) in satisfaction of a claim, or (b) against a claim, with a defence denying liability; and thereupon, for the purposes of payment out of Court, the money mentioned in the notice shall be subject to the next following Rule. The person leaving such notice must produce therewith the original receipt of the Bank for the amount lodged.

VI. PAYMENT, DELIVERY, AND TRANSFER OF FUNDS OUT OF COURT,
AND OTHER DEALINGS WITH FUNDS.

44. *Payment out of Court of money lodged under Orders XXII. and XXXI. of R. S. C., 1883, and in actions remitted to County Courts.*—In the Chancery and King's Bench Divisions, when money has been lodged under Orders XXII. and XXXI. of the Rules of The Supreme Court, 1883 (as described in Rules 30 and 32 of these Rules), and when and so far as money lodged under Order XIV. of the said Rules of the Supreme Court has been appropriated in the manner provided in the last preceding Rule, payment of the money shall be made to the person in satisfaction of whose claim it has been lodged, or to the person otherwise entitled thereto, or, on the written authority of either such person respectively, to his solicitor, as

under:—unless an Order restraining such payment has been lodged at the Pay Office prior to the issue of the Paymaster's direction for payment—

- (a) When the money has been lodged or appropriated in satisfaction of a claim (or with defence setting up tender), under Rules 30 (a) and 32 (a) of these Rules, or the last preceding Rule, a direction for payment shall be issued by the Paymaster upon a request or authority in the Form No. 14 (a) in the Appendix to these Rules, or as nearly as may be.
- (b) When the money has been lodged or appropriated against a claim, with a defence denying liability, under Rules 30 (b) and 32 (b) of these Rules, or the last preceding Rule, a direction for payment shall be issued by the Paymaster upon receipt of a notification that the plaintiff accepts the sum lodged in satisfaction, and that due notice has been given of such acceptance, and upon a request or authority for payment of the same; such notification and request or authority to be in the Form No. 14 (b) in the Appendix to these Rules, or as nearly as may be.
- (c) When the money has been lodged to a Security for Costs Account under Rules 30 (c) and 32 (c) of these Rules, a direction for payment shall be issued by the Paymaster upon receipt of a certificate of a Master, Taxing Officer, Registrar in Bankruptcy, or Official Referee (as the case may be) as to the person who is entitled to have paid out to him the money so lodged; such certificate to be printed, or partly printed, and as nearly as may be in the Form No. 14 (c) appended to these Rules.

When a request is made for payment of money lodged in the Chancery and King's Bench Divisions on a notice or pleading, the original receipted notice or pleading must, whenever so required, be produced at the Pay Office.

In the Probate Divorce and Admiralty Division when money has been lodged to a Security for Costs Account, under the provisions of Rule 26 of Order XXXI. of the Rules of The Supreme Court, 1883, a direction for payment shall be issued by the Paymaster upon receipt of a certificate or other authority of a Registrar as to the person entitled to payment of the money so lodged.

Where any money has been lodged in Court in a cause or matter which has been remitted or transferred to a County Court, the Paymaster, on the receipt of a requisition (in the form No. 18 in the Appendix to these Rules) from the Registrar of the County Court to which the action has been remitted or transferred, shall send to him by post a direction for the payment of the amount named therein. The requisition shall be sufficient evidence of the Order remitting or transferring the cause or matter to the County Court, and shall be sufficiently authenticated by the seal, and the signature of the Registrar, of the said Court. When any such County Court has an account at the Bank, payment shall be made thereto by transfer under the provisions of Rule 52 of these Rules.

Except as in this Rule is provided, the money so lodged or appropriated as mentioned herein shall only be paid out in pursuance of an Order.

45. *In other cases funds to be dealt with only in pursuance of an Order.*—Except as provided in the last preceding Rule, and subject to the provisions contained in Rules 55, 56, 57, 70, 73, 74, and 109, funds in Court shall not be paid, delivered, or transferred out of Court, nor invested, sold, or carried over, unless in pursuance of an Order, or in the case of an investment of money or application of dividends unless in pursuance of an authority contained in a certificate of a Master in Lunacy.

46. *A copy of every Order dealing with funds in the K.B. or P.D. and A. Division to be sent to the Pay Office.*—A duly authenticated copy of every Order in the King's Bench Division or the Probate Divorce and Admiralty Division, which directs funds to be dealt with, shall be sent by the Master, Registrar, Official Referee, Clerk of Assize, or Associate, as the case may be, to the Paymaster, and shall be his authority for the issue of directions giving effect to such Orders.

47. *Paymaster to prepare directions giving effect to Orders upon receipt of the necessary authority and information.*—The directions of the Paymaster for the payment of money under these Rules, and for the delivery of securities out of Court in pursuance of an Order shall be prepared by the Paymaster forthwith, or from time to time, upon receipt of a copy of the Order and any further necessary authority or information and of the fulfilment of the conditions of payment (if any) prescribed by the Order; and except

as otherwise provided in these Rules such directions shall be delivered upon the personal application of the persons entitled thereto.

Investments of money, transfers of securities out of Court, and carrying over of funds, in pursuance of an Order, shall be made by the Paymaster upon receipt of the necessary authority and information.

Except as hereinafter provided, sales of securities in pursuance of an Order of which a copy has been received in the Pay Office may be made by the Paymaster by one or more transactions, or from time to time as may be necessary for the purpose of carrying out the directions in the Order, upon application by or on behalf of the person interested therein, and such application may be sent by post.

When an Order directs the sale of securities from time to time as may be necessary for the purpose of providing for an annuity or other periodical payment, the securities may be sold by the Paymaster, when such sale becomes necessary, on receipt of evidence of the life of the payee, and of the fulfilment of the conditions of payment, if any, prescribed by the Order, without any application by or on behalf of the person interested therein.

48. *Payments may be made by Post.*—Subject to the conditions as to limitation of amount and otherwise in this Rule mentioned, and to any variation of such conditions which the Treasury may from time to time direct, persons entitled to payment of money may receive from the Paymaster, by post, a direction or other document by which payment may be obtained as follows:—

- (a) When money, not exceeding a sum of £1000 (other than a periodical payment hereunder in this Rule mentioned), is payable to a person having an account at a bank in the United Kingdom, whose name and address are stated in the Order or other authority under which the money is payable, or in a certificate of a Master, or of a Taxing Officer, or of a Master in Lunacy, to be acted upon by the Paymaster, or whose address, in the case of a payment under an Order in the Chancery Division, is certified to the Paymaster by the solicitor having carriage of the Order which authorises the payment, the Paymaster shall remit the same by post to such person to the address so stated, upon receipt of a request to that effect in the prescribed form, in which is specified

the name of the bank at which the money is to be placed to the account of such person. The Paymaster's direction for payment will be payable to the order of such person, and will be specially crossed to his account at the bank named in such request.

This provision shall apply to payments to creditors, under the Rules of the Supreme Court, Order LV., Rule 60A.

- (b) When money, not exceeding a sum of £500 (other than a periodical payment hereunder in this Rule mentioned), is payable to a person residing within the United Kingdom, who has not an account at a bank, or whose address is not ascertained by the Paymaster in the manner above prescribed, the Paymaster shall remit the same by post to such person upon the receipt of a request to that effect in the prescribed form, signed by such person and attested by a justice of the peace, or a commissioner to administer oaths, or a clerk in holy orders, or a notary public, or the solicitor having carriage of the Order. The Paymaster's direction for payment will be sent to such person at the address stated in the request, and will be crossed so as to be payable only through a bank.
- (c) When money, not exceeding a sum of £10 (other than a periodical payment hereunder in this Rule mentioned), is payable to a person residing within the United Kingdom, whose name and address are stated in an Order under which the money is payable, or in a certificate of a Master, or of a Taxing Officer, or of a Master in Lunacy, to be acted upon by the Paymaster, or whose address, in the case of a payment under an Order in the Chancery Division, is certified to the Paymaster by the solicitor having carriage of the Order, the Paymaster upon the written request of such person (without attestation) shall remit the amount by post to such person at the address so ascertained. The direction for payment will be crossed so as to be payable only through a bank.
- (d) When money not exceeding a sum of £5 (other than a periodical payment in this Rule mentioned) is payable to a person residing within the United Kingdom, whose

name and address are stated in the Schedule to an Order, or in a Master's or Taxing Officer's certificate, or in a request or authority under Rule 44 of these Rules, or whose address, in the case of a payment under an Order in the Chancery Division is certified to the Paymaster by the solicitor having carriage of the Order, the Paymaster shall remit the amount by post direct to such person at the address so stated, or to his legal personal representative if deceased (as provided by Rule 62 of these Rules), without any previous request in that behalf. The direction for payment will be crossed so as to be payable only through a bank.

- (e) Any person, who, either residing within the United Kingdom, or if residing elsewhere having an account at a bank within the United Kingdom, is entitled under an Order to any dividend, annuity, or other periodical payment, may send to the Paymaster a request, in the prescribed form, for the remittance of the same by post from time to time as it accrues due, such request to be signed by such person and attested in the manner required in part (b) of this Rule; and the Paymaster shall thenceforward, as such periodical payment falls due (and upon receipt of evidence of life and of the fulfilment of any conditions of payment prescribed by the Order), remit a direction for payment, by post, to such person at the address stated in the request. The Paymaster's direction will be crossed so as to be payable only through a bank, and when payable to a person having an account at a bank in the United Kingdom, but residing elsewhere, will be crossed to his account at the bank named in the request.
- (f) The trustees or other officers for the time being of any public body or charity, entitled under an Order, and by virtue of their office, to any dividend, annuity, or other periodical payment may send to the Paymaster a request, in the prescribed form, for the remittance of the same by post from time to time as it accrues due, to one of the said trustees or other officers; and the Paymaster shall thenceforward, as such periodical payment falls due, and upon receipt of the necessary

evidence of life and continued tenure of office, remit to the said trustee or other officer, at the address stated in the request, a direction for payment crossed to the account of the trustees or other officers of the said public body or charity, at a bank to be named in the request.

When such trustees or other officers are empowered to use a Common Seal, the request shall be duly sealed and authenticated.

- (g) The following provision shall be additional, and alternative, to the foregoing:—

In any case where money, not exceeding a sum of £1000, is payable to a person having an account at a bank within the United Kingdom, whose name and address are stated or ascertained as provided in part (a) of this Rule, or to the trustees or other officers for the time being of any public body or charity referred to in part (f) of this Rule, the Paymaster, on receipt of a request in the prescribed form, may remit by post to the bank named therein a direction for payment crossed to the account of the said person, or of the trustees or other officers as aforesaid, at the said bank.

- (h) The lawful attorney of any person entitled under an Order to any money or periodical payment, who has been authorised by such person under a power of attorney issued in the form prescribed or approved by the Treasury to receive the same on his behalf, may send to the Paymaster a request in the prescribed form, with any necessary variation, for the remittance to him by post of the sum so authorised to be received, and the Paymaster shall thereupon, on receipt, when required, of evidence of the life of the said person, remit the amount by post to such attorney at the address stated in the request. The direction for payment will be specially crossed to the account of the said attorney at the bank named in the request.

Requests and solicitors' certificates of addresses, and notifications of changes of addresses of persons entitled to periodical payments under this Rule shall be in such form as may from time be prescribed by or with the approval of the Treasury.

All directions for payment which are remitted by post under this Rule shall be marked "Not Negotiable."

When a person who is unable to write executes a request by affixing his mark instead of a signature, he shall do so in the presence of a witness, who shall sign his own name and state his address, and shall certify that the request was first read over and fully explained to, and appeared to be understood by, such person.

The Paymaster may refuse to make a remittance under this Rule in any case in which he sees reason for so doing, and the remittance by post, upon a request, of any crossed direction or other document for obtaining payment shall be at the sole risk of the person at whose request it is sent.

49. *Paymaster's directions to be sufficient authority to the Bank or other company.*—The directions of the Paymaster issued under these Rules (signed and countersigned by such officers as may be prescribed or approved by the Treasury, under Rule 107) shall be sufficient authority to the Bank for the payment of the money specified in any such directions, and shall be the necessary and sufficient evidence of an Order of the Court, or of the circumstances provided for in Rule 109 of these Rules, to authorise the Bank or other company to transfer, on sale or otherwise, or to deliver, any securities or boxes or other effects standing to the Pay Office account which may be specified in any such directions.

50. *Discharge to Paymaster.*—(a) A direction or other document by which payment of money is effected, when endorsed or signed by the payee, or his lawful attorney, or by the secretary, manager, or other proper officer of a bank in any case provided for in Rule 48 (g) of these Rules, shall be a good discharge to the Paymaster for the amount therein expressed.

(b) In the case of a payment directed to be made to a branch of a company having its chief registered office in London, and such company requests that the said payment may be made to it at such chief registered office, the direction for payment when endorsed or signed by the secretary, manager, or other proper officer of such company, at such chief registered office, shall be a good discharge as aforesaid.

51. *Authorities for payments to others than named persons to be witnessed.*—When money is by an Order in the King's Bench Division directed to be paid to a person therein named, or, on his authority, to a solicitor or other person, the signature to the authority must be attested by a witness, whose residence and description must be added to his attestation.

In the case of a person residing out of the United Kingdom, his signature must be witnessed by a British consular officer or other authority, or by a foreign notary public or other foreign official, who shall in each case affix his official seal (if any).

52. *Payments to official persons, or banks, by transfer.*—(a) When money in Court or any sum payable thereout is by an Order directed to be paid to any public officer or department, or to the official liquidator of any company, or any other official persons for whom an account is kept at the Bank, payment thereof shall, on a request to that effect, be made by a direction to the Bank to transfer the amount of such payment to the proper account at the Bank accordingly.

(b) When any duty is directed to be paid out of the funds in Court, such duty shall, without any words in the Order to that effect, be assessed, and, on a request made by or on behalf of the Commissioners of Inland Revenue, be transferred to the proper account at the Bank.

(c) When a person to whom money is payable in his own right under an Order becomes bankrupt, the Paymaster, upon the request of the Official Receiver, or Trustee, or other duly authorised person, shall transfer the amount so payable to the proper account at the Bank.

(d) When any money is payable under an Order or a Master's certificate, or a power of attorney, or on a request as provided by Rule 48 (g) of these Rules to a London bank having an account at the Bank of England, the Paymaster may, on a request to that effect from such bank in the prescribed form, issue a direction to the Bank of England to transfer the amount of such payment to the said account; and such transfer shall be equivalent to a remittance by post under such Rule.

This provision shall apply, if so requested, to any money payable as aforesaid to a branch of a bank having its chief registered office in London.

53. *Payments for securities purchased, and transfers of securities sold.*—When money in Court is invested in the purchase of securities, otherwise than under Rule 86 of these Rules, the payment for such investment shall (unless otherwise ordered) include brokerage, and shall be made conditionally upon the transfer or deposit to the Pay Office account of the securities purchased.

When securities in Court are sold, otherwise than under Rule 86 of these Rules, the transfer or delivery of such securities shall be conditional upon the payment to the Pay Office account of the proceeds of such sale, after deduction (unless otherwise ordered) of brokerage:

Provided that the Bank shall not be answerable for any default of the Broker of the Supreme Court in respect of such transfer to the Pay Office account of securities purchased, or of such payment to the Pay Office account of the proceeds of securities sold.

54. *Accounts to which investments, sales, &c., are to be credited.*—Upon an investment of money in Court or the sale of securities in Court, the securities purchased by such investment or the money realised by such sale, respectively, shall in every case be placed to the credit to which the money invested or the securities sold previously stood, unless, in the case of an investment, otherwise specially ordered.

55. *Application of dividends accruing on securities transferred.*—When securities in Court are directed to be transferred, delivered out, or carried over, dividends accruing thereon subsequently to the date of the Order directing the transfer, delivery, or carrying over (when the amount of the securities to be transferred, delivered, or carried over is specified in such Order, or if not so specified then subsequently to the time when the amount of such securities shall be ascertained) shall be paid to the persons to whom or carried over to the credit to which the securities are to be transferred, delivered, or carried over unless such Order otherwise directs. When securities in Court are directed to be realised, and the whole of the proceeds paid out or carried over in one sum, or in aliquot parts (except when the realisation is to raise a specific sum of money), any dividends accruing on such securities subsequent to the date of the Order directing the realisation (if the amount of such securities is specified in the Order, or if not so specified, then subsequently to the time

when such amount shall be ascertained) shall be added to such proceeds, and applied in like manner therewith, unless such Order otherwise directs.

56. *When such dividends have been invested.*—When such dividends as in the last preceding Rule mentioned have pursuant to a general or other previous Order, or these Rules, been invested, the securities purchased with such dividends shall, unless otherwise directed, be transferred or delivered, and any dividends accrued in respect thereof be paid, to the persons to whom or carried over to the credit to which such first-mentioned dividends would if uninvested have been paid or carried over.

57. *When dividends otherwise applicable have been invested.*—In every case (other than that provided for by the last preceding Rule), when by an Order money or dividends are directed to be dealt with so that the same ought not to be invested, and subsequently to the date of such Order such money or dividends or any part thereof shall have been invested, the securities purchased with such money or dividends shall, unless otherwise directed, be sold, and the proceeds of such sale and any dividends accrued in respect of such securities shall be applied in the same manner as the money or dividends so invested would have been applied under such Order if they had not been so invested.

58. *Dividends on residue.*—When under any Order dividends on securities in Court are directed to be dealt with, and a subsequent Order is made dealing with part of such securities, the dividends on the residue shall, unless such subsequent Order shall otherwise direct, continue to be dealt with in the same manner as the dividends on such securities were by the prior order directed to be dealt with.

59. *Application of money or dividends placed on deposit after date of Order dealing therewith.*—When subsequently to the date of an Order dealing with money in Court such money shall have been placed on deposit, as hereinafter provided, or when dividends accruing subsequently to the date of an Order under which such dividends are applicable shall have been placed on deposit, the same when withdrawn from deposit, and any interest credited in respect thereof, shall, unless the Order otherwise directs, be applied in the same manner as such money or dividends would have been applied had the same not been so placed on deposit.

60. *Application of interest on money placed on deposit after date of Order directing its investment.*—When an Order directs money in Court to be invested, and subsequently to the date of such Order the money shall have been placed on deposit, interest accruing in respect of such money shall be applied in the same manner as the dividends arising from such investment are directed to be applied.

61. *Funds ordered to be paid or transferred to women who afterwards marry.*—(a) When funds in Court exceeding £20 in amount, or when an annuity, or dividends, or other periodical payment exceeding £50 per annum, are by an Order directed to be paid, transferred, or delivered to a woman in her own right who is not married at the date of the Order, or who, being married at that date, shall become a widow, and such woman shall marry before payment, transfer, or delivery of such funds, upon an affidavit of such woman and her husband that no settlement or agreement for a settlement whatsoever has been made or entered into, before, upon, or since their marriage, or in case any such settlement or agreement for a settlement has been made or entered into, then upon an affidavit of such woman and her husband identifying such settlement or agreement for a settlement, and stating that no other settlement or agreement for a settlement has been made or entered into as aforesaid, and an affidavit of the solicitor of such woman and her husband that such solicitor has carefully perused such settlement or agreement for a settlement, and that, according to the best of his judgment, such funds are not, nor is any part thereof, subject to the trusts of such settlement or agreement for a settlement, or in any manner comprised therein or affected thereby, such funds shall be paid, transferred, or delivered to such woman without the intervention or concurrence of her husband in the same manner as if she had remained unmarried.

(b) If the amount so directed to be paid, transferred, or delivered does not exceed £20 in amount, or consists of an annuity, or dividends, or other periodical payment, not exceeding £50 per annum, an affidavit may be dispensed with, and payment may be made on a declaration in writing by the woman in such form as the Treasury may prescribe or approve.

(c) When payments not exceeding £50 per annum are by an Order directed to be made to a mother as guardian of her infant

children, and such mother marries after the date of the said Order, such payments may be made to her, notwithstanding her marriage, on her separate receipt.

62. *Payments, &c., to representatives of deceased persons.*—(a) When funds in Court are by an Order directed to be paid, transferred, or delivered to any person named or described in an Order, or in a certificate of a Master, or of a Taxing Officer, or of a Master in Lunacy (except to a person therein expressed to be entitled to such funds as real estate, or to be entitled thereto as a trustee, executor, or administrator, or otherwise than in his own right, or for his own use), such funds, or any portion thereof for the time being remaining unpaid or untransferred or undelivered, may, unless the Order otherwise directs, on proof of the death of such person, whether on or after, or, in the case of payment directed to be made to creditors, shareholders or debenture holders as such, before the date of such Order, be paid or transferred or delivered to the legal personal representatives of such deceased person, or to the survivors or survivor of them.

Except as hereinafter provided, proof of the death of such person and of the title of the legal personal representative to receive the funds so directed to be paid, transferred, or delivered, shall be given by affidavit, of which an office copy shall be lodged with the Paymaster.

(b) If no administration has been taken out to any such deceased person who has died intestate and whose assets do not exceed the value of £100, including the amount of the funds directed to be so paid, transferred, or delivered to him, such funds may be paid, transferred, or delivered to the person who, being widower, widow, child, father, mother, brother, or sister of the deceased would be entitled to take out administration to the estate of the deceased, upon a declaration by such person in the Form No. 15 in the Appendix to these Rules.

(c) When funds in Court are by an Order directed to be paid, transferred, or delivered to the legal personal representative of a deceased person when constituted, then, if such person has died intestate, and no administration has been taken out to his estate, and his assets, including the amount of the funds directed to be so paid, transferred, or delivered do not exceed the value

of £100, such funds may be paid, transferred, or delivered to the person as described in part (a) of this Rule, who would be entitled to take out letters of administration, upon a declaration by such person in the Form No. 15 in the Appendix to these Rules, or to the like effect.

(d) When money not exceeding £10 in amount is by an Order or a Master's or Taxing Officer's certificate directed to be paid to any person in his own right, and such person dies either on or after the date of the Order, or in the case of a person described as a creditor, shareholder, or debenture holder, before, on, or after the date of the Order or certificate, the amount may be paid to his legal personal representative, upon production of the probate or letters of administration, or upon a declaration by the legal personal representative in the Form No. 17 in the Appendix to these Rules, without production of the probate or letters of administration.

63. *Payments, &c., to partners, married women, and liquidators.*—

(a) When money in Court is by an Order directed to be paid to any persons described therein, or in a certificate of a Master, or of a Taxing Officer, or of a Master in Lunacy, as co-partners, or as trading or carrying on business in the name of a company or firm, such money may be paid to any one or more of such persons, or to the survivor of them.

(b) Unless the Court shall otherwise direct, payment to a person described as a married woman may in every case be made to her upon her separate receipt.

(c) When a Company to which money is directed to be paid is subsequently to the date of the Order being wound up under the Companies Acts, the Paymaster, upon proof of the appointment of a liquidator, and upon his request, under the seal of the Company, may pay to him the amount so payable. The direction for payment will be specially crossed to the account of the Company (in liquidation) at a bank to be named by the liquidator, and his receipt shall be a good discharge to the Paymaster. Payment to an official liquidator shall be made by transfer under Rule 52a of these Rules.

64. *Payments to surviving representatives, &c.*—(a) When funds in Court are by an Order directed to be paid, transferred, or delivered to any persons as legal personal representatives, such

funds, or any portion thereof for the time being remaining unpaid, untransferred, or undelivered, may, upon proof of the death of any of such representatives, whether on or after the date of the Order directing such payment, transfer, or delivery, be paid, transferred, or delivered to the survivors or survivor of them.

(b) When money not exceeding £100 in amount is payable to two or more persons described in an Order or in a Master's Certificate as legal personal representatives, payment of the same may be made to any one of them, unless the Order otherwise directs.

This provision shall also apply to a payment of like amount to legal personal representatives under Rule 62 of these Rules.

65. *Within what time probate or letters of administration must have been granted.*—No funds shall, under Rules 62 and 64, be paid, transferred, or delivered out of Court to the legal personal representatives of any person under any probate or letters of administration purporting to be granted at any time subsequent to the expiration of six years from the date of the Order or certificate directing such payment, transfer, or delivery, or in case such funds consist of interest or dividends from the date of the last receipt of such interest or dividends under such Order or certificate.

66. *Payment of duty.*—The Paymaster, before acting upon an Order for the payment, transfer, or delivery of funds in respect of which any duty is (under Rule 20) stated to be payable, shall require the production of the official receipt for such duty, or a certificate from the proper officer of the payment thereof, or that no such duty is payable; and the Paymaster, on receiving notice from the proper officer in any case that such duty is payable, shall cause a memorandum to that effect to be made in his books.

67. *Carrying over fees on proceedings and taxation, and other amounts, to the credit of the vote for the Supreme Court.*—(a) When costs are by an Order directed to be paid out of funds in Court, the Taxing Officer shall certify the amount of any fees which have not been paid but are payable, and are proper to be paid out of such funds, in respect of any proceedings in the cause or matter, whether the amount shall or shall not have been previously ascertained, and in respect of the taxation of such costs. The Paymaster shall carry over the amount of fees so certified to be

payable from the account to which such funds are placed to an account in the Pay Office books for "Fees on Proceedings and Taxation."

(b) Any fees, poundages, and percentages certified by the Admiralty Registrar or other proper officer of the Admiralty Registry to be payable out of funds in Court shall be carried over by the Paymaster to an account in the Pay Office books for "Fees on Proceedings and Taxation."

(c) Any amount directed by a Master in Lunacy to be carried over, as Lunacy Percentage, from the credit of any matter in Lunacy shall, on receipt of the Order or other authority, be carried over by the Paymaster to an account in the Pay Office books entitled "The Paymaster-General's Lunacy Percentage Account."

(d) Unless the Court shall otherwise direct, upon any transfer of securities out of Court under an Order, except for the purpose of carrying out a sale, a commission shall be charged, and be payable in advance, as follows:—

On Government and other securities, transferable, by inscription, at the Bank of England, or elsewhere—

	s.	d.
On each transfer not exceeding £100 in nominal value	2	6
On each transfer not exceeding £500 in nominal value	5	0
On each transfer exceeding £500 in nominal value	10	0
On other securities, transferable by deed—		
On each transfer, irrespective of nominal value	10	0

The commission shall be lodged to the Pay Office account by the person applying for the transfer, and, when so lodged, shall be placed to an account in the Pay Office books of "Commission on Transfer-out of Securities."

(e) The commission referred to in Rule 88 of these Rules, when paid in or realised or deducted as provided by such Rule, shall be placed or carried over to an account in the Pay Office books for "Commission on Exchange."

(f) The brokerage upon investments and sales charged under Rule 53 or 110 of these Rules (exclusive of Stamp Duty and Registration Fees) shall be lodged to the credit of "The Paymaster-General's Brokerage Account."

(g) Except in the case of periodical payments of dividends or interest upon funds in Court, no sum of less than one shilling shall be paid by the Paymaster, and such sums shall be carried over to an account in the Pay Office books entitled "Sums of less than one shilling held under Rule 67 (g)."

(h) In apportioning to any Ledger credit the dividends and interest received in respect of securities standing thereto, the Paymaster may exclude fractions of a penny, and shall carry over the aggregate amounts of such excluded fractions to an account in the Pay Office books entitled "Dividend fractions of pence held under Rule 67 (h)."

The sums so lodged, placed, or carried over to the accounts respectively named in this Rule shall be from time to time transferred to "The Paymaster-General's Cash Account," for the credit of the vote for the Supreme Court of Judicature, or otherwise as the Treasury may direct.

68. *Deduction of income tax on payments of annuities.*—(a) In acting on Orders directing any annuities to be paid out of dividends to accrue on securities in Court (other than securities specifically carried over to provide for such annuities), the Paymaster shall draw only for so much of the sums directed by such Orders respectively to be paid as shall remain after making a deduction therefrom for income tax at the rate payable during the time such annuities were accruing due, unless such sums shall be directed to be paid without making any such deduction.

(b) When, for the purpose of providing for the payment of any annuity, an Order shall direct securities or any part of the same to be sold from time to time, as may be necessary, income tax at the rate in force at the time of payment of such annuity shall be deducted from the amount raised by such sale. The amount of such income tax shall be transferred to the account of the Commissioners of Inland Revenue at the Bank.

VII.—*Investments.*

69. *Investment of accruing dividends under an Order.*—(a) When an Order directs the investment and accumulation of dividends accruing on securities in Court, or to be transferred into Court,

or directed to be purchased with money in Court, or to be lodged in Court, the Paymaster upon receipt of the copy of such Order shall, without any request, from time to time (until he shall receive a request or copy of an Order to the contrary) invest such dividends, if amounting to or exceeding £20 quarterly or half yearly, together with all accumulations of dividends thereon, as soon as conveniently may be after they shall accrue due and have been received, in the particular description of securities named in the Order directing such investment and accumulation.

(b) When under any Order, or these Rules, the dividends on securities in Court are directed to be accumulated, by being invested, or placed on deposit, and a subsequent Order is made otherwise dealing with such dividends, or cash representing dividends, or any part thereof, the Paymaster may suspend such accumulation until he shall receive further directions from the Court.

70. *Purchase of Exchequer bonds.*—When money in Court is invested in Exchequer bonds, and when such bonds are lodged in Court, in pursuance of an Order, or under these Rules, any principal money or interest which may thereafter be received and paid into the Bank in respect of such bonds, or in respect of any such bonds for which the same may be exchanged, shall from time to time, as the same shall be so received and paid into the Bank, be also invested by the Paymaster, unless such Order otherwise directs, or until he receives a written request or notice of a further Order to the contrary, in Exchequer bonds which shall be placed to the same credit.

71. *Bank to receive principal and interest of securities when paid off.*—(a) When and so often as any securities deposited at the Bank to the credit of the Pay Office account shall be in course of payment, the Bank shall, without any direction from the Paymaster, cause all such securities so in course of payment to be delivered to one of the cashiers of the Bank, who is to receive the principal money or interest due thereon, and the Bank shall forthwith after every such receipt of principal or interest certify to the Paymaster, without any direction from him for that purpose, the amounts of securities so paid off, and the amount of the principal money and interest received on such securities; and upon receiving such certificate the Paymaster shall

place such principal money and interest to the credit in the books at the Pay Office to which the securities so paid off were placed.

(b) When the interest on any securities in Court is payable on the presentation of coupons in series, and the last coupon of any such series has been presented and paid, the Bank, without any direction from the Paymaster to that effect, shall take the necessary steps for obtaining a new series of coupons.

72. *Limit of amount to be invested.*—(a) A sum of money in Court less than £20 shall not be invested in securities, unless an Order directs such investment to be made notwithstanding the smallness of the amount. This Rule shall extend to the investment of dividends accruing on securities in Court which are directed to be invested.

(b) Unless the Order otherwise directs, the investment of money in securities, other than Government securities under Rule 86, may be effected by one or more transactions, from time to time, until the total investment directed by the Order has been completed.

73. *Investment of money lodged under The Trustee Act, 1893.*—(a) A sum of money lodged in Court without an affidavit, as provided in Rule 41, if or so soon as such money and the interest, if any, to be credited in respect thereof shall amount to or exceed £20, and the dividends accruing on any securities so lodged, if and when they shall amount to or exceed £20, shall be invested without any Order or request in Consols, and the dividends accruing on such Consols and all accumulations thereof shall, if or so soon as they amount to £20, be invested in Consols.

(b) When it is stated in the Schedule to the affidavit made pursuant to Rule 41 that it is desired that any money to be lodged in Court, and the accumulations thereof, or any dividends to accrue on any securities to be so lodged, should be invested in any description of Government securities, such money, if or so soon as such money and the interest, if any, to be credited in respect thereof shall amount to or exceed £20, and the dividends accruing on such securities, if or so soon as they shall amount to or exceed £20, shall be invested accordingly, without any Order or further request for that purpose.

(c) Dividends accruing on funds or on investments or accumulations of funds lodged in Court under the 32nd Section of the Act 36 Geo. III. cap. 52, or under the Act 10 & 11 Vict. cap. 96, prior to the commencement of the Chancery Funds Rules, 1872, shall, when or so soon as they amount to or exceed £20, be invested without any request.

74. *Lodgment under 36 Geo. III. c. 52, s. 32, and 10 & 11 Vict. c. 96, prior to 1st January, 1894, to be dealt with as if lodged under The Trustee Act, 1893.*—Money or securities lodged in Court under the 32nd Section of the Act, 36 Geo. III. cap. 52, or under the 10 & 11 Vict. cap. 96, prior to the 1st January, 1894, and securities purchased with such money, or the income thereof, shall, subject to any Order affecting the same made prior to the 1st January, 1894, be dealt with in the same manner as if such money or securities had been lodged in Court under the 42nd Section of The Trustee Act, 1893.

75. *Investment stayed or discontinued on request.*—In all cases, upon a request signed by a solicitor acting on behalf of any person claiming to be entitled to or interested in securities in Court, that the dividends or interest accruing on any specified securities may not be invested, being at any time left at the Pay Office, the Paymaster shall be at liberty to cease to invest any more dividends or interest accruing on such securities or to place the same on deposit until he has received a copy of a Schedule in that behalf.

VIII.—MONEY ON DEPOSIT, AND INTEREST THEREON.

76. *Money to be placed on deposit.*—Subject to the two Rules next following all money to be lodged in Court in the Chancery Division, including dividends received in respect of securities in Court and not otherwise directed to be dealt with, shall be placed on deposit without a request. But money arising by the sale, conversion, or payment off of securities in Court in that Division shall only be placed on deposit upon a request to that effect.

77. *Money not to be placed on deposit in certain cases*—Money shall not be placed on deposit in the following cases:—

- (a) In any cause or matter in the King's Bench Division, or in the Probate Divorce and Admiralty Division, or in Lunacy.

- (b) When lodged in the Chancery Division under the provisions of Order XXII. or of Rule 26 of Order XXXI. of the Rules of The Supreme Court, 1883:
- (c) When lodged under the standing orders of either House of Parliament, pursuant to the Act 9 & 10 Vict. c. 20 or any Act amending the same, in respect of works or undertakings to be executed under the authority of Parliament, or when lodged under any Rule or Provisional Order made by the Board of Trade:
- (d) If lodged prior to the commencement of the Court of Chancery Funds Act, 1872, pursuant to the Copyhold Acts, or to Section 69 of The Lands Clauses Consolidation Act, 1845:
- (e) When the amount is less than £20:
- (f) When an Order is made dealing with the money or any part of it otherwise than by directing it or the residue thereof to be placed on deposit or carried over:
- (g) When a request that the money shall not be placed on deposit, signed by a solicitor acting on behalf of a person claiming to be entitled to or interested in the money, is left at the Pay Office: Provided that the person making such request may at any time withdraw the same, and request that the money may be placed on deposit.

78. *When money shall be withdrawn from deposit.*—Money shall be withdrawn from deposit in the following cases:—

- (a) When and to such an amount as the money is by an Order directed to be dealt with, otherwise than by carrying over:
- (b) When the amount is reduced below £20:
- (c) Upon a request signed by a solicitor acting on behalf of a person interested, and countersigned by a Registrar or Master, containing a notification that the money is about to be dealt with by an Order.

79. *Time for placing money on deposit.*—The placing on deposit of money lodged in Court shall not be deferred beyond the last day of the month in which it shall be lodged in Court, or in which a request to place the same on deposit shall have been

received at the Pay Office; but in the case of money lodged in Court on the last day of a month, or when a request as above is received on the last day of a month, the placing on deposit shall not be deferred beyond the last day of the following month.

80. *As to placing on deposit cash arising from conversion of Government securities.*—When an Order directs Government securities to be sold and the whole of the money arising thereby to be placed on deposit, and when such securities are realised by exchange as hereinafter provided, such money shall be deemed to have been placed on deposit (without a request for that purpose) on the day on which such exchange shall be effected.

81. *No interest on fraction of £1.*—Interest upon money on deposit shall not be computed on a fraction of £1.

82. *For what periods interest is to be computed.*—Interest upon money on deposit shall accrue by calendar months, and shall not be computed for any less period than one month. Such interest shall begin on the first day of the calendar month next succeeding that in which the money is placed on deposit, and shall cease from the last day of the calendar month next preceding the day of the withdrawal of the money from deposit.

83. *When interest is to be credited.*—Interest which has accrued for or during the half years ending respectively the 31st of March and the 30th of September in every year on money then on deposit shall, on or before the 15th days of the months respectively following, be placed by the Paymaster to the credit to which such money shall be standing on every such half-yearly day. And when money on deposit is withdrawn from deposit, the interest thereon which has accrued and has not been credited shall be placed to the credit to which the money is then standing.

84. *Mode of calculating interest in certain cases on parts of money withdrawn.*—When money on deposit consists of sums which have been placed on deposit at different times, and an Order is made dealing with the money, and part of such money has to be withdrawn from deposit for the purpose of executing such Order, the part or parts of the money dealt with by such Order last placed and remaining on deposit at the time of such withdrawal shall, for the purpose of computing interest, be treated as so withdrawn, unless the Order otherwise directs.

85. *Placing of interest on deposit.*—Unless otherwise directed by an Order, interest credited on money on deposit shall, when or so soon as it amounts to or exceeds £20, be placed on deposit, and for the purpose of computing interest upon it shall be treated as having been placed on deposit on the last half-yearly day on which any such interest became due.

IX.—EXCHANGE OR CONVERSION OF GOVERNMENT SECURITIES AND TRANSACTIONS WITH THE NATIONAL DEBT COMMISSIONERS.

86. *Exchanges of securities in lieu of actual purchases and sales.*—When Government securities in Court are directed to be sold, such securities may be realised by exchange in the Pay Office books in the manner hereinafter provided. And when money in Court is required to be invested in Government securities, such investment may be made by exchange in like manner.

87. *Manner of recording such exchanges.*—For the purpose of effecting any such exchange, an account of each description of Government securities shall be kept at the Pay Office, entitled “Exchange Accounts,” and such accounts shall contain on the one side thereof the amount of securities received in exchange for money and the amount of money received in exchange for securities, and on the other side thereof the amount of money and securities given in exchange for such securities and moneys respectively. The money value of the securities received or given in exchange under this Rule shall be determined by the price of the day next following that on which the Paymaster is required or authorised to make the sale or investment; or if the money invested consist of dividends accrued on securities in Court, and previously to the accruing thereof required or authorised to be invested in Government securities, the price of the day next following that on which such dividends shall be placed by the Bank to the Pay Office account, or if no price can be ascertained for such day then the price of the next following day for which it can be ascertained.

The price herein mentioned shall be, in the case of purchases, one-sixteenth per cent. above, and in the case of sales, one-sixteenth per cent. below, the Bank average price of the Government securities appearing in the account transmitted to the Comptroller General of the National Debt Office by the cashiers of the Bank, a copy whereof shall be sent daily by the Bank to the Pay Office.

88. *Commission to be charged on exchanges and paid to the Exchequer.*—Upon every such sale or investment by exchange a commission shall be charged of one eighth per cent. on the amount of money realised or invested, in lieu of any brokerage provided for by the Order or usually charged upon the sale or purchase of such securities; but no such charge for commission shall in any case be less than sixpence; and unless the payment thereof is otherwise provided for by the Order, such commission shall be deducted from the proceeds of the realisation or the amount to be invested respectively, or in case a specific amount of money is to be realised, the commission upon it shall also be realised by the exchange of an additional amount of the securities by which the realisation is to be effected; and when the payment of brokerage is otherwise provided for, the Paymaster shall not be required to give effect to any such exchange until such commission has been paid into the Bank to the Pay Office account. Such commission when so paid in or realised and deducted as aforesaid shall be placed to an account in the Pay Office books for “Commission on Exchanges”; and the amount so placed shall be dealt with as provided in Rule 67 (e) of these Rules.

89. *Periodical adjustment of exchange account.*—The Paymaster shall from time to time, but not less than once in every year, prepare and transmit to the National Debt Commissioners a statement of the result of the exchange operations under these Rules, showing the total amounts of each description of Government securities purchased by exchange and realised by exchange, respectively; and the total amounts of the cash charged and credited, respectively, in the Pay Office books as the money value of the securities exchanged. And the difference so arising between the amount of any description of Government securities standing to the credit of the Pay Office account at the Bank and the amount of such securities appearing by the books of the Pay Office to be in Court, and also the difference between the money value nominally paid and nominally received for such securities, shall be forthwith adjusted as follows:—

- (a) If such statement shows that the total amount of any description of Government securities purchased by exchange is in excess of the total amount of the same description of securities realised by exchange, the amount of such excess of securities purchased by exchange shall

be transferred by the National Debt Commissioners from their account at the Bank on behalf of the Supreme Court to the Pay Office account at the Bank. And such transfer of securities shall be treated as a repayment by the said Commissioners, out of the money placed in their hands by the Paymaster on behalf of the Supreme Court, of the difference between the cash charged and credited respectively in the Pay Office books in respect of such exchanges, as shown in the said statement.

- (b) If such statement shows that the total amount of any description of Government securities purchased by exchange is less than the total amount of the same description of securities realised by exchange, the amount of the excess of securities realised by exchange shall be transferred by the Paymaster to the account at the Bank of the National Debt Commissioners on behalf of the Supreme Court. And the money value of the securities so transferred (being the difference between the cash charged and credited, respectively, in the Pay Office books in respect of such exchanges, as shown in the said statement), shall be placed by the National Debt Commissioners to the credit of the account kept by them of money placed in their hands by the Paymaster on behalf of the Supreme Court.

90. *Adjustment of dividends on Government securities in Court.*—The Paymaster shall from time to time prepare and transmit to the National Debt Commissioners a statement showing the amount of the dividends, less income tax, which became payable in the period to which such statement relates, on the Government securities in Court (at the closing of the Bank books for such dividends) as shown by the Pay Office books, and the amount of the dividends received in the same period on the Government securities standing to the credit of the Pay Office account at the Bank; and the difference appearing thereby shall be adjusted as follows:—

- (a) If the amount of dividends payable shall have exceeded the amount of dividends received, the amount of the difference shall be credited by the National Debt Commissioners to the account kept by them of money placed in their hands by the Paymaster on behalf of the Supreme Court.

- (b) If the amount of dividends received shall have exceeded the amount of dividends payable, the amount of the difference shall be transferred by the Paymaster to the account at the Bank of the National Debt Commissioners on behalf of the Supreme Court.

91. *Surplus of money on the Pay Office Account to be transferred to the National Debt Commissioners.*—When the money to the credit of the Pay Office account is, in the opinion of the Paymaster, in excess of the amount required for the purpose of making current payments, he shall transfer the amount of such excess from the Pay Office Account to the account at the Bank of the National Debt Commissioners on behalf of the Supreme Court, and shall notify such transfer to the said Commissioners.

92. *Deficiency of money on the Pay Office Account to be made good by National Debt Commissioners.*—When the money to the credit of the Pay Office account is, in the opinion of the Paymaster, insufficient for the purpose of making current payments, the National Debt Commissioners, upon a request in writing of the Paymaster, shall forthwith transfer from their account at the Bank on behalf of the Supreme Court to the Pay Office account the amount of money specified in such request.

93. *National Debt Commissioners to give credit for interest on money on deposit.*—The Paymaster shall, after the 31st March and 30th September in every year, certify to the National Debt Commissioners the amount of interest on money on deposit which has accrued for or during the half years respectively ending on those days; and the National Debt Commissioners, as soon thereafter as may be, shall place such amount to the credit of the account kept by them of money placed in their hands by the Paymaster on behalf of the Supreme Court, and shall cause the amount of income tax (if any) chargeable on such interest to be paid to the account at the Bank of the Commissioners of Inland Revenue.

X.—CALCULATION OF RESIDUES, EVIDENCE OF LIFE, &c.

94. *Calculations of residues to be made in Pay Office.*—For the purpose of ascertaining the amounts of any residue or aliquot part of money or securities dealt with by an Order, when such amounts cannot be stated in the Payment Schedule and are not directed to be certified, or otherwise ascertained by any means provided by the Order, or by these Rules, the necessary calculations shall be made in

the Pay Office: Provided that the Paymaster may require such calculations to be first stated in a certificate signed by the solicitor of the party interested.

95. *Evidence of life, &c.*—When any person is entitled, under an Order, to receive dividends or other periodical payments from the Pay Office, and the Paymaster requires evidence of life or of the fulfilment of any conditions affecting such payments, such evidence may be furnished by a declaration signed by a solicitor acting on behalf of such person, or by a declaration signed by the person entitled to the payment, and attested by a Justice of the Peace, Commissioner to Administer Oaths, Notary Public, Clerk in Holy Orders, a Minister of religion, acting as resident within the town or district where he attests, a banker, or the agent or manager of a bank within the United Kingdom, or a registered medical practitioner in attendance on the declarant; and the Paymaster shall act on such evidence unless in any case he thinks fit to require such evidence to be by statutory declaration or affidavit. The Paymaster may prescribe, with the approval of the Treasury, the terms in which such declaration or affidavit shall be made, and the forms to be used for that purpose. The provisions of this Rule shall apply to Orders made before these Rules come into operation, notwithstanding anything as to evidence in such Orders contained.

96. *Affidavits in other cases.*—When in carrying into effect the directions of an Order evidence is required by the Paymaster for any purposes other than those included in the immediately preceding Rules, he may receive and act upon an affidavit, or upon a statutory declaration, and every such affidavit or statutory declaration shall be filed in the Central Office when the Paymaster shall consider it necessary.

XI.—COPIES OF ORDERS AND OTHER DOCUMENTS FOR AUDIT OFFICE.

97. *Office copy of Schedules, &c., to be sent to Audit Office.*—An Office copy of the Schedules to every Order in the Chancery Division and in Lunacy, and, when requested, an office copy of any Order in the King's Bench and Probate Divorce and Admiralty Divisions, to be acted upon by the Paymaster, shall be transmitted by the proper officer to the Audit Office; and in case of any amendments being made in any such Schedule or Order, such office copy shall be likewise amended.

98. *Office copy of certificates and other documents to be sent.*—An office copy of every certificate or other authority of a Master of the Supreme Court, Taxing Officer, or of a Master in Lunacy, which is to be acted upon by the Paymaster, or so much thereof as may be necessary, and an office copy of any certificate, affidavit, or statutory declaration which may be received in evidence by the Paymaster, shall, when requested, be transmitted by the proper officer to the Audit Office.

XII.—MISCELLANEOUS.

99. *Paymaster to give certificates of funds in Court.*—The Paymaster, upon a request signed by or on behalf of a person claiming to be interested in any funds in Court standing to the credit of an account specified in such request, may, in his discretion, issue a certificate of the amount and description of such funds, and such certificate shall have reference to the morning of the day of the date thereof, and shall not include the transactions of that day.

The Paymaster shall notify on such certificate the dates of any Orders restraining the transfer, sale, delivery out, or payment, or other dealing with the funds in Court to the credit of the account mentioned in such certificate, and whether such Orders affect principal or interest; and any Charging Orders affecting such funds, of which respectively he has received notice, and the names of the persons to whom notice is to be given, or in whose favour such restraining or charging Orders have been made; and the date of any notice which he may have received stating that Duty is payable, of which a memorandum has been made in his books pursuant to Rule 66 of these Rules.

The Paymaster may re-date any such certificate, provided that no alteration in the amount or description of the funds has been made since the certificate was issued.

When a cause or matter has been inserted in the list referred to in Rule 101, the fact shall be notified on the certificate relating thereto.

100. *Paymaster may issue transcripts of accounts and furnish other information.*—Upon a request signed by or on behalf of a person claiming to be interested in funds in Court, the Paymaster may, in his discretion, issue a transcript of the account in his books specified in such request; and if so required by the person to whom it is issued, such transcript shall be authenticated at the

Audit Office. He may also upon a like request supply such other information or issue such certificates with respect to any transactions or dealings with funds in Court as may from time to time be required in any particular case.

101. *List of dormant funds to be made triennially and published.*—On or before the 1st day of March in every third year the Paymaster shall prepare, in such form and with such particulars as the Treasury may from time to time direct, a list or statement of the accounts in the books of the Pay Office to the credit of which there stood on the 1st day of September then next preceding any funds not less than £50, which have not been dealt with, otherwise than by the continuous investment or placing on deposits of dividends, during the 15 years immediately preceding the last-mentioned date.

The said list or statement shall be filed in the Central Office and a copy thereof shall be inserted in the "London Gazette" and exhibited in the several Offices of the Court.

The Paymaster may, in his discretion, give any information respecting any funds in Court mentioned in such list or statement upon a request signed by the person applying for such information or by his solicitor. If such request be made by a solicitor, such information shall not be given unless the request states the name and address of the person on whose behalf it is made, and that such person is in the opinion of the applicant beneficially interested in such funds. If such request be made by any person other than a solicitor, such information shall not be given unless the applicant is able to satisfy the Paymaster that the request is such as may in the particular case be properly complied with.

The Paymaster may omit from such list or statement any account in respect of which he may be informed by or on behalf of a person claiming to be interested therein that an Order dealing therewith will be applied for; or any account the funds standing to the credit of which have been lodged under Rule 41 (a) of these Rules and remained undealt with for a period not exceeding 20 years.

102. *Transfer of small balances to a special account.*—The Paymaster may from time to time carry over to a special account for small balances such balances of money and securities as do not together exceed £5, and on which the money or securities shall not have been dealt with during the preceding five years. When an

Order dealing with funds carried over under this Rule is to be acted upon, the Paymaster shall carry back such funds and any dividends accrued thereon to the account from which they were so carried over, and shall deal therewith as directed by such Order.

103. *Titles of accounts not to exceed thirty-six words.*—The length of the title of any ledger credit shall not exceed thirty-six words: Provided that such title may be extended beyond thirty-six words if a sufficient reason be assigned to the satisfaction of a Registrar or Master of the Supreme Court; and the Registrar or Master shall in such case add to the instruction to open such credit the words “notwithstanding Rule 103”; and provided also that the Paymaster may extend any such title if in his opinion a sufficient reason be assigned for so doing. In such title four figures shall be reckoned as one word.

104. *Outstanding cheques of late Accountants General.*—Unpaid cheques signed by the late Accountant General, or any of his predecessors, shall be a sufficient authority to the Paymaster for making the payments therein purporting to be intended to be made.

105. *Index of documents filed.*—An index shall be made and kept in the Central Office of all documents by these Rules directed to be filed there.

106. *Names and addresses of suitors.*—Upon the request of any person, or of a solicitor acting on behalf of any person, named in an Order and entitled to or interested in funds in Court, the Paymaster shall record, in such manner as he shall consider convenient for reference, the name and address of such person, or of the solicitor for the time being acting on his behalf, and also any change of such address which may be notified to him.

107. *Paymaster's directions to be issued and signed as Treasury may prescribe.*—The directions of the Paymaster for giving effect to these Rules shall be prepared and issued in such form and manner as the Treasury may from time to time direct, and shall be signed by such officers as the Treasury may prescribe or approve.

108. *Identification of persons to be paid, &c.*—It shall be the duty of the Paymaster to comply with any instructions which may be given to him by the Treasury as to the means of identifying

any person to whom a direction for payment of money or for delivery of securities out of Court is issued, when such identification may be deemed necessary.

109. *Conversion of securities: and securities of extinct companies.*—

(a) Whenever any amount or number of stock, shares, or other security in Court (in this Rule referred to as “the original security”) is converted into any other stock, shares, or other security (in this Rule referred to as “the substituted security”), so that the description thereof will differ from the description given of the original security in the Order or other authority under which the Paymaster acts respecting the same, the Paymaster shall write off from the account to which the same may be standing the original security so converted, and shall place to the same account a proportionate part of the substituted security; and except in so far as any original security may be affected by any Order brought to the Pay Office in due time for that purpose, the Paymaster shall, as far as may be practicable, give effect to every part of any Order or other authority under which he has been acting which shall refer to any such original security so converted as aforesaid, or the dividends thereon, as if it referred to the substituted security or the dividends thereon: Provided that payments of income shall not be made in pursuance hereof without an Order, in any case where the substituted security is a terminable annuity, unless such terminable annuity is based upon a deduction for sinking fund intended to replace the capital of the original security.

(b) The Paymaster may, without any Order in that behalf, take the necessary steps, under such directions as may be given by the Treasury from time to time, to effect the conversion of any securities in Court, the conversion of which is compulsory upon the holders under any Act of Parliament, or the sanction of the Court, or any scheme of arrangement or sale duly effected or sanctioned under any of the provisions of the Companies Acts. There shall be lodged with the Paymaster the authority for such conversion, including, if required by him, an office copy of an affidavit of the Secretary or other proper officer of the Company or public body concerned, or of the solicitor for any of the parties to the cause or matter to the credit of which the securities stand setting out the circumstances under which the conversion has become compulsory upon the holders;

and such documents shall be retained by the Paymaster, and shall be his authority for effecting the conversion referred to therein.

(c) Where any company has been wound up, and thereafter is struck off the Register the Paymaster, on receipt of notification in writing from the Liquidator, or from the Board of Trade, that no assets are or will be distributable in respect of any securities of the company which have been lodged in Court, and from the Registrar of Joint Stock Companies that the Company has been struck off the Register, shall withdraw from the Bank the certificates, if any, representing such securities, and shall write off the said securities from the account to which the same may be standing, and shall send the certificates, if any, to the Audit Office, together with the notifications from the Liquidator or the Board of Trade, and the Registrar of Joint Stock Companies, which shall be his authority for such writing-off.

110. *Allotments of new stock by companies.*—Whenever any allotment letters, scrip allotments, or other securities are allotted or assigned in respect of any sums of stock, or of any shares or other security in Court, such allotment letters, scrip allotments, or other securities (excepting such of them, if any, as may be affected by any Order of which the Paymaster has notice) shall be sold. The money to arise by the said sale shall be paid by the broker to the Pay Office account at the Bank and placed in the books of the Pay Office to the respective accounts to which the said stock or shares or other security are standing, in respect of which such allotment letters, scrip allotments, or other securities have been allotted or assigned.

111. *Rules to apply to District Registries at Liverpool and Manchester.*—These Rules shall apply to funds in Court or hereafter lodged in Court in the District Registries in Liverpool and Manchester; but shall not apply in other District Registries.

2nd August, 1905.

HALSBURY, C.

We certify that these Rules are made with the concurrence of the Commissioners of His Majesty's Treasury.

H. W. FORSTER,
EDMUND B. TALBOT.

APPENDIX.

Form No. 1.

Lodgment Schedule, referred to in Rule 5.

LODGMET SCHEDULE.

In the High Court of Justice.—Chancery Division.

Date of Order 19 .

Title of Cause or Matter 19 (Letter and
Number of Action.)

Ledger credit. [If same as title of Cause, state "As above."]

Particulars of Funds to be lodged to the account of the Paymaster-General.	Person to make the Lodgment.	Amounts.	
		Money.	Securities.

See Specimen entries on next two pages.

*Specimen Lodgment Schedules.***(A.)**

In the High Court of Justice.—Chancery Division.

Date of Order, 1st June, 1905.

Re Morton deceased, *Morton v. Matthews.* 1904. M. 391.

Ledger credit: As above.

Particulars of Funds to be lodged to the account of the Paymaster-General.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	s.	d.	£	s.	d.
Balance on passing final account as Receiver (to be certified).	Edmund James White (the Receiver)						
Balance due from him as Executor (to be certified).	James Matthews (Defendant)						

(B.)

In the High Court of Justice, Chancery Division.

Date of Order, 1st June, 1905.

Allen v. Baker. 1904. A. 16.

Ledger credit: As above.

Particulars of Funds to be lodged to the account of the Paymaster-General.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	s.	d.	£	s.	d.
Consols	John Allen and James Brown.	...	...	...	15,000	0	0
Great Western Railway Company 4 p.c. Debenture Stock.	The same	...	...	...	1,500	0	0
Balance of Cash, to be certified.	James Brown						
Invest in Consols							
Accumulate all interest in Consols.							

*Specimen Lodgment Schedule of Purchase Money, to be signed by
a Master of the Supreme Court.*

(C.)

In the High Court of Justice.—Chancery Division.

Allen v. Baker. 1904. A. 16.

Ledger credit: The said Action. Proceeds of sale of real estate.

LODGMET SCHEDULE.

Purchase Money to be lodged pursuant to Order dated
30th March, 1905.

Particulars of Money to be lodged to the account of the Paymaster-General.	Persons to make the Lodgment.	Amount.		
		£	s.	d.
Auctioneer's Deposit	Thomas Allen	20	0	0
Balance of purchase money and interest thereon (less Income Tax).	William King, the purchaser	195	2	6
Invest amonnts lodged in Consols.				
Accnmlate Interest in Consols.				
The above funds are not to be paid out, transferred, or other- wise dealt with without notice to the said William King.				
		215	2	6

Total amount) Two Hundred and Fifteen Pounds Two Shillings
in words) and Sixpence.

Dated this 1st day of June, 1905.

(Signed)

A Master of the Supreme Court.

Form No. 2.*Payment Schedule, referred to in Rule 6.*

PAYMENT SCHEDULE.

In the High Court of Justice.—Chancery Division.

Date of Order 19

Title of Cause or Matter (with Letter and Number).

Ledger credit. [If same as title of Cause, &c., state "As above."]

Funds in Court.

Particulars of payments, transfers, or other operations to be carried out by the Paymaster.	Payees and transferees or titles of separate accounts.	Amounts.	
		Money.	Securities.

See Specimen entries on next two pages.

Specimen Payment Schedule.

(A.)

In the High Court of Justice.—Chancery Division.

Date of Order, 1st June, 1905.

Brown v. Deane. 1904. B. 165.

Ledger credit: As above.

Funds in Court { £1730 7s. 7d. Consols.
£10 13s. 2d. Cash.

Particulars of payments, transfers, or other operations to be carried out by the Paymaster.	Payees and transferees or titles of separate accounts.	Amounts.					
		Money.			Securities.		
		£	s.	d.	£	s.	d.
Pay	John Park, of 4 High Street, Bristol.	5	6	7			
Transfer Consols	Jane Edwards, wife of John Edwards, and the said John Edwards.				100	0	0
Sell residue of Consols - Out of proceeds, residue of cash, and any interest— Pay Costs to be taxed under this order. Pay duty (if any). Pay £100 and interest (less Income Tax) to 25th March, 1905. Pay Income Tax so deducted from Interest. Divide residue into fourths, and pay and carry over as under:— Pay:— Two fourths					1,630	7	7
Pay £100 and interest (less Income Tax) to 25th March, 1905. Pay Income Tax so deducted from Interest.	Contts & Company, bankers, London.	104	16	6			
Divide residue into fourths, and pay and carry over as under:— Pay:— Two fourths			4	10			
Out of one fourth	Emma Joy, wife of John Joy, of Rectory Place, Hastings.	79	10	6			
Residue of such one fourth.	Eliza Joy, of 401 Old Bond Street, W., Widow.						
Carry over one fourth Invest in Consols.	Edward Sparkes and John Sparkes, as executors of William Sparkes.						
Pay Interest as it accrues during the minority of William Peters, born 19th May, 1899.	Said action: the account of William Peters, an infant. James Peters, his guardian.						

Specimen Payment Schedule.

(B.)

In the High Court of Justice.—Chancery Division.

Date of Order, 1st June, 1905.

Smith v. Williams, 1904, S. 1031.

Ledger credit: The said Action. Legacy of £1500 for Charles Pearce and Susan his wife and their children.

Funds in Court { £1662 11s. Consols.
 { £50 Money on Deposit.
 { £48 1s. 3d. Cash.

Particulars of payments, transfers, or other operations, to be carried out by the Paymaster.	Payees and transferees or titles of separate accounts.	Amounts.					
		Money.			Securities.		
		£	s.	d.	£	s.	d.
Sell Consols - Out of proceeds, Money on Deposit, cash, and any interest:— Pay -		—	—	—	1,662	11	0
Pay -	David Shore and Charles Weaver, co-partners, of 268 Cheapside, E.C.	45	6	2			
Pay costs to be taxed under this Order. Divide residue of funds into fourths, and Pay as under:— One-fourth							
Out of one-fourth	George Turner, of Cross Street, Bolton.						
Residue of last-named one-fourth.	James Watson & Co., of 160 Moorgate Street, E.C.	100	0	0			
Out of one-fourth.	Birmingham Banking Company, Limited, mortgagees.						
Out of same one-fourth, interest on £100 at £4 per centum per annum (less tax) from March 1st, 1905, to the day for payment.	Henry Earle, of Croydon, as mortgagee.	100	0	0			
Residue of same one-fourth	The same.						
One-fourth	Robert Wild and Joseph Hunter, as trustees of Arthur Turner.						
	Matthew Field, of Coventry.						

Form No. 3.

Combined Lodgment and Payment Schedule, referred to in Rule 8.

LODGMET AND PAYMENT SCHEDULE.

In the High Court of Justice.—Chancery Division.

Date of Order 19

Title of Cause or Matter 19 (Year, Letter,
and Number of Action.)

Ledger credit. [If same as title of Cause, state "As above."]

I. LODGMET.

Particulars of funds to be lodged to the account of the Paymaster-General.	Person to make the Lodgment.	Amounts.			
		Money.		Securities.	

II. PAYMENT.

Funds to be dealt with { £ 2½ per cent. Annuities.
£ Cash.
Funds to be lodged as above.

Particulars of payments, transfers, or other operations to be carried out by the Paymaster.	Payees, transferees, or titles of separate accounts.	Amounts.			
		Money.		Securities.	

Form No. 4.*Certificate of Ascertained Sums, referred to in Rule 11.*

In the High Court of Justice.—Chancery Division.

Title of Cause or Matter

Ledger credit. [If same as title of Cause, state "As above."]

I certify that under an Order dated _____ 19 _____,
 the sums stated in the Schedule subjoined hereto, amounting in
 the whole to ¹ _____ pounds
 _____ shillings and _____ pence,
 have been ascertained to be the sums payable under the said
 Order to the persons respectively named, in respect of [*state in
 what character paid*].

Dated this _____ day of _____ 19 _____

{ A Master of the Supreme Court
 { (or as the case may be).

SCHEDULE.

Name in full (<i>Christian name to precede Surname</i>).	Address.	Amount to be paid.		
	Total	£		

¹ Amount in words.

Form No. 5.

Certificate of Taxed Costs, referred to in Rule 12.

In the High Court of Justice.—Chancery Division.

Title of Cause or Matter

Ledger credit. [If same as title of Cause, state "As above."]

In pursuance of an Order dated 19 , I have been attended by the solicitors for

and I certify that I have taxed the costs specified in the Schedule subjoined hereto, directed to be taxed by the said Order, at the sums respectively stated in the Schedule, which sums, with the fees of taxation specified (if any) amount to the total sum¹ of
 pounds shillings
 and pence.

Dated this day of , 19 .

{ A Master of the Supreme Court, or Taxing Officer (or as the case may be).

SCHEDULE.

Costs of	Payable to		Amount of taxed costs and fees.	
	Name.	Address.		
Fees of Taxation (if any)				
		Total	£	

¹ Amount in words.

Form No. 7.

Order for Payment in King's Bench Division, or Probate, Divorce, and Admiralty Division, referred to in Rule 28.

In the High Court of Justice.— Division.

Title of Cause or Matter v. 19 (Year,
Letter, and Number of Action.)

Ledger credit. [If same as title of Cause, state "As above."] [Name
of ship in Admiralty actions.]

Date , 19

The Paymaster is hereby directed to make the payments specified below out of the money standing in his books to the above-mentioned Ledger credit (*or as the case may be*).

Name (in full), and address, of the person to be paid <i>(Christian name to precede surname).</i>	Name (in full) of the person (if any) to give authority for payment.	Particulars. (Date of lodgment, &c.)	Amount to be paid.	
		Total - £		

Total amount } in words. } shillings, and } pounds,
pence.

(Signature)

Title of Office

Form No. 8.

Request for Lodgment of Money in Chancery Division, referred to in Rule 30.

In the High Court of Justice.—Chancery Division.

I.—REQUEST FOR DIRECTION FOR LODGMENT.

Title of Cause or Matter v. 19 . (Year,
Letter, and Number of Action.)

Ledger credit to which } [If same as title of Cause, state "As above."]
to be lodged.

Further particulars (if any) required to be stated.

The Paymaster is hereby requested to issue a direction to the Bank to receive from the sum of £
for the above-mentioned Ledger credit in the books of the Supreme Court Pay Office.

(Signature)

(Address)

Dated 19 .

II.—PAYMASTER'S DIRECTION FOR LODGMENT.

To the Agent of the Bank of England (Law Courts Branch).

Please receive the above-stated sum, and place it to the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature.

(Signature)

Supreme Court Pay Office 19

III.—BANK CERTIFICATE OF RECEIPT.

To the Assistant Paymaster-General, Royal Courts of Justice.

Bank of England (Law Courts Branch) 19 .

The above-stated sum has been this day received.

(Signature)

For the Bank of England.

Form No. 9.

Request for Lodgment or Transfer of Securities in Chancery Division, referred to in Rule 30.

In the High Court of Justice.—Chancery Division.

I.—REQUEST FOR DIRECTIONS FOR LODGMET OR TRANSFER OF SECURITIES.

Title of Cause or Matter. (Year, Letter, and Number of Action.)

Ledger credit to which } [If same as title of Cause, state "As above."]
to be lodged. }

Authority is hereby requested for the lodgment or transfer to the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature of the securities mentioned below, for the above-mentioned Ledger credit in the books of the Supreme Court Pay Office.

To be lodged or transferred by

Description and amount of securities

Date of Order (if any)

19

(Signature)

(Address)

II.—PAYMASTER'S DIRECTION FOR LODGMET OR TRANSFER.

Authority is hereby given for the lodgment or transfer of the above-mentioned securities to the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature.

(Signature)

Supreme Court Pay Office

19

III.—CERTIFICATE OF LODGMET OR TRANSFER.

(Address)

(Date)

19

It is hereby certified that in accordance with the above authority the securities herein mentioned have this day been lodged or transferred to the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature.

(Signature)

N.B.—Under the Supreme Court Funds Rule 29, having statutory authority, the Paymaster's direction for the lodgment of any securities (including stock and shares) is the necessary and sufficient evidence of the Order quoted therein to authorise the person, bank, or company named therein to lodge the securities to the above account.

The bank or other company in whose books the transfer herein authorised is made will certify such transfer hereon, and return the document (entire), with the relative Stock or Share Certificate (if any), to the Assistant Paymaster-General, Royal Courts of Justice, London.

Form No. 10.

Request for Lodgment in Chancery Division, under Orders XXII. and XXXI., referred to in Rule 30.

High Court of Justice.—Chancery Division.

I.—REQUEST FOR LODGMENT OF MONEY, UNDER ORDER XXII. OR
RULE 26 OF ORDER XXXI.

Title of Cause or Matter v. 19 . (Year,
Letter, and Number of Action.)

Ledger credit to } [If same as title of Cause, state "As above."]
which to be } (To be first verified at the Pay Office.)
lodged.

To the Agent of the Bank of England (Law Courts Branch).

Please receive £ . . . , for the account of the
Paymaster-General for the time being for and on behalf of the
Supreme Court of Judicature, which amount is paid in¹

(Signature)

(Address)

Solicitor for the

(Date)

19

III.—BANK CERTIFICATE OF RECEIPT.

To the Assistant Paymaster-General, Royal Courts of Justice.

Bank of England (Law Courts Branch) 19

The above-stated sum has been this day received.

(Signature)

For the Bank of England.

¹ Insert one of the following statements, in accordance with the circumstances:—

(a) "on behalf of defendant [*state name*] in satisfaction of claim of above-named" [*state name of party*] (or "with defence setting up tender").

(b) "on behalf of defendant [*state name*] against claim of above-named" [*state name of party*] "with defence denying liability."

(c) "to Security for Costs account on behalf of" [*state name of the party to the action, and whether plaintiff or defendant*].

Form No. 11.

Request for Lodgment in King's Bench Division, referred to in Rule 32.

In the High Court of Justice.—King's Bench Division.

I.—REQUEST FOR LODGMENT OF MONEY.

Title of Cause or Matter v. 19 . (Year,
Letter, and Number of Action.)

To the Agent of the Bank of England (Law Courts Branch).

Please receive £ : , for the account of the
Paymaster-General for the time being for and on behalf of the
Supreme Court of Judicature, which amount is paid in¹

(Signature)

(Address)

Name of Solicitor on the other side :

Solicitor for the

(Date) 19 .

II.—BANK CERTIFICATE OF RECEIPT.

To the Assistant Paymaster-General, Royal Courts of Justice.

Bank of England (Law Courts Branch) 19

The above-stated sum has been this day received.

(Signature)

For the Bank of England.

¹ Insert one of the following statements in accordance with the circumstances:—

(a) "on behalf of defendant [state name] in satisfaction of claim of above-named" [state name of party] (or "with defence setting up tender").

(b) "on behalf of defendant [state name] against claim of above-named" [state name of party] "with defence denying liability."

(c) "to Security for Costs account on behalf of" [state name of the party to the action, and whether plaintiff or defendant].

(d) If lodged in pursuance of an Order, or otherwise than as above, state nature and date of authority. For instance:—"Under Order dated day of 19 ,", or, "On notice of appeal [in bankruptcy], dated day of 19 ."

Form No. 12.

*Request for Lodgment in Probate, Divorce, and Admiralty
Division, referred to in Rule 34.*

In the High Court of Justice.—Probate, Divorce, and Admiralty
Division.

I.—REQUEST FOR AUTHORITY FOR LODGMENT.

Title of Cause or Matter *v.* 19 . (Year,
Letter, and Number of Action.)

Ledger credit. [If the same as title of Cause, state "As above."]
[Name of ship in Admiralty actions.]

To the Registrar.

I request authority for the lodgment of £ at the Bank of
England; such lodgment being for¹

(Signature)

(Address)

(Date) 19 .

¹ State here such particulars as may be required.

II.—REGISTRAR'S AUTHORITY FOR LODGMENT.

To the Agent of the Bank of England (Law Courts Branch).

Please receive the above-stated sum and place it to the account
of the Paymaster-General for the time being for and on behalf of
the Supreme Court of Judicature.

(Signature)

(Date) 19

III.—BANK CERTIFICATE OF RECEIPT.

To the Assistant Paymaster-General, Royal Courts of Justice.

Bank of England (Law Courts Branch) 19

The above-stated sum has been this day received.

(Signature)

For the Bank of England.

Form No. 14a.

Request for Payment of Money lodged "in satisfaction," referred to in Rule 44 (a).

In the High Court of Justice.— Division.

REQUEST FOR PAYMENT OF MONEY LODGED, OR APPROPRIATED, IN SATISFACTION OF CLAIM, UNDER RULE 5 OR RULE 11 OF ORDER XXII.

Title of Cause or Matter v. 19 . (Year,
Letter, and Number of Action.)

Ledger credit }
[In Chancery } [If same as title of Cause, state "As above."]
Division]. }

To the Assistant Paymaster-General, Royal Courts of Justice, W.C.

I hereby request that payment of the sum of £
paid into Court in the above action may be made to [erase one or
the other, as the case may be]¹ me the plaintiff [or to
of , the solicitor to me, the plaintiff].

(Signature)²

(Address)

(Date)

19 .

(Signature of Witness)

(Address)

(Occupation)³

¹ N.B.—If payment is to be made to the plaintiff's solicitor, the plaintiff must himself sign the request, and insert therein the words "the solicitor to me, the plaintiff" (*naming such solicitor*). If payment is to be made to the plaintiff in person, the request may be issued either by the plaintiff, who should insert "me, the plaintiff," or by the solicitor of the plaintiff, who must insert "the plaintiff" (*naming him*).

² If the plaintiff is resident out of the United Kingdom, the signature must be witnessed by a British consular or other authority, or by a foreign notary or other foreign official, who should in each case affix his seal (if any).

³ A clerk or employee should state the name of his employer.

Form No. 15.

Declaration, referred to in Rule 62, to be made by a relative of a person who has died intestate, when letters of administration have not been taken out, and when the total assets of the estate of the deceased have not exceeded the value of £100.

In the High Court of Justice.— Division.

Ledger credit

1¹ declare that I am the 2² solemnly and sincerely
of the next of kin of 3³ and next or one
on 19 and that I am entitled to take out administration who died
to his estate, and to receive the sum of £ directed to be paid to
him 4⁴ by the Order dated 19

And I further declare that the total value of the assets of the deceased, including the above sum, does not exceed £100; and I certify that the death-bed and funeral expenses of the deceased have been paid. And I make this solemn declaration conscientiously believing the same to be true.

(Signature of Applicant)

(Address)

Declared before me this day of 19

See Note below.

(Signature)

(Address)

(Qualification)

We certify that the person who has signed the above declaration is personally known to us, and that we believe his [or her] statement to be true.

(Signature)

(Address)

(Signature)

(Address)

To be signed by two householders resident in the Parish.

I certify that the persons whose signatures are last above subscribed are resident householders in this Parish.

Minister in the Parish of

NOTE.—The declaration may be made before a Justice of the Peace, Commissioner to Administer Oaths, Notary Public, Clerk in Holy Orders, or the solicitor having carriage of the Order.

¹ Name of applicant.

² Degree of relationship.

³ Name of deceased.

⁴ Or "to the legal personal representative of

when constituted."

Form No. 16.

Request for Lodgment without an Affidavit, under The Trustee Act, 1893, and Certificate of Commissioners of Inland Revenue to be furnished therewith, referred to in Rule 41 (a).

TRUSTEE ACT, 1893.—Legacy (or Share of Residue) of *E. F.* under the Will (or Intestacy) of *C. D.*

A. B. the executor of the Will (or administrator of the estate) of *C. D.* deceased, whose Will was proved (or of whose estate letters of administration were granted) on the day of proposes to lodge in Court to the credit of "Legacy to (or share of legacy of) *E. F.*, an infant (or beyond seas) under the Will (or intestacy) of *C. D.*" the sum of £ ¹ (or the following securities representing), the full amount (or part) of such legacy (or share of residue) to which the said *E. F.* is absolutely entitled [*describe securities, if any, which must be such as the Paymaster can properly accept*].

(Signature)

(Address)

(Date)

19 .

¹ N.B.—No deduction for costs and expenses must be made from the amount to be paid.

CERTIFICATE OF COMMISSIONERS OF INLAND REVENUE

[To accompany above request].

(A.) *If Duty has been paid.*

Reg. of the year 19 . Fo.

I certify that the sum of £ was paid on the day of for legacy duty, at the rate of per cent. in respect of the above-mentioned (*state amount of money or describe securities*) payable to , described as a of the deceased.

Dated the day of , 19

By order of the Commissioners of Inland Revenue.

(Signed)

(B.) *If no Duty is chargeable.*

Reg. of the year 19 . Fo.

I certify that no legacy duty is chargeable in respect of the above-mentioned (*state amount of money or describe securities*) payable to E. F., described as a of the deceased, inasmuch as such sum is (*or such securities are*) stated to be part of the personal estate of the deceased, upon the value whereof stamp duty has been paid under Section 27 (*or 33*) of the Act 44 Vict. cap. 12, and therefore exempt from legacy duty under Section 41 (*or 35*) of that Act.

Dated the day of , 19 .

By order of the Commissioners of Inland Revenue.

(Signed)

Form No. 17.

Sums not exceeding £10. Rule 62 (*d*).

Declaration by Executor or Administrator of
a person entitled to payment.

In the High Court of Justice.— Division.

Precise title of Matter or Suit }
as in Pay Office books. }

Date of Order _____ 19
Certificate filed _____ 19

I¹ of solemnly and
sincerely declare that I am² of³
of who died on 19 , and whose
Will was proved, or letters of administration to whose estate were
granted, on the 19

I am entitled to receive the sum of £ directed to be paid
to the said deceased by the above-mentioned Order (*or Certificate*).

And I make this solemn declaration conscientiously believing the
same to be true.

(*Signature of Executor* }
or Administrator)

Declared before me this
of , 19 .
Justice of the Peace, for or } (*Signature*)
Minister of or
A Commissioner to Administer Oaths. }

¹ Name, address, and description of applicant.

² Executor (or one of the Executors) or Administrator. ³ Name and address of deceased

Form No. 18.

Application to Paymaster-General for transmission to County Court of Money paid into High Court in Action or Matter remitted or transferred to County Court, referred to in Rule 44.

In the County Court of _____ holden at _____ .

In the Matter of an Action (or Matter) remitted (or transferred) from the High Court of Justice.

Title of Action or Matter _____ 19 . (Letter) No.

Ledger credit as in Pay Office books. } [If the same as title of Action or Matter say "As above."]

The above action or matter having been remitted (or transferred) from the High Court of Justice to, and entered for trial in, this Court, pursuant to an Order of _____ dated the _____ day of _____ 19 _____, I hereby request that the sum of £ _____ paid into the High Court in the said action (or matter) on the _____ day of _____, 19 _____, may be transmitted to the Court by cheque payable to my order and crossed to "The account of the County Court of _____ holden at _____," at the _____ bank.

Dated this _____ day of _____, 19 _____



Registrar of the said County Court.

Address for remittance

To the Assistant Paymaster-General,

Royal Courts of Justice,

London, W.C.

APPENDIX I.

PART C.

THE JUDICIAL TRUSTEE RULES, 1897

ARRANGEMENT OF RULES.

RULE

1. Short title.

APPOINTMENT OF JUDICIAL TRUSTEE.

2. Mode of making application.
3. Service of summons.
4. Statement to be supplied on application.
5. Removal of restriction as to appointment of certain persons to be trustees.
6. Vesting orders.

APPOINTMENT OF OFFICIAL OF COURT TO BE JUDICIAL TRUSTEE.

7. Official judicial trustee.

ADMINISTRATION OF THE TRUST.

8. Statement of trust property.
9. Security.
10. Trust account at bank and custody of documents.
11. Judicial trustee not to keep money in his hands.
12. Directions to judicial trustees.
13. Power to dispense with formal evidence.

ACCOUNTS AND AUDIT.

14. Accounts and audit.
15. Filing and inspection of accounts.
16. Deductions allowed.

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17. Remuneration of judicial trustee.
18. Application of remuneration of official of the Court.
19. Forfeiture of remuneration

REMOVAL AND SUSPENSION OF JUDICIAL TRUSTEE.

20. Suspension of judicial trustee.
21. Removal of judicial trustee.
22. Inquiry into conduct of judicial trustee.

RESIGNATION AND DISCONTINUANCE OF JUDICIAL TRUSTEE.

23. Resignation of judicial trustee.
24. Discontinuance of judicial trustee.

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25. Executors and administrators.
26. Special trusts.

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27. Exercise of powers of Court.
28. Communication between judicial trustee and Court.

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29. District registries.

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30. Palatine Courts.

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31. County Court jurisdiction.

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32. Fees.

OFFICER OF THE COURT.

33. Meaning of "officer of Court"

SUPPLEMENTAL.

34. Rules to be construed as part of the general Rules of Court.
35. Application of Interpretation Act.

SCHEDULE.

RULES UNDER THE JUDICIAL TRUSTEES ACT, 1896.

1. *Short title (59 & 60 Vict. c. 35).*—The following Rules may be cited as The Judicial Trustee Rules, 1897, and shall apply as far as practicable to all matters and proceedings under The Judicial Trustees Act, 1896 (in these Rules called “the Act”).

APPOINTMENT OF JUDICIAL TRUSTEE.

2. *Mode of making application.*—An application to the Court to appoint a judicial trustee shall be in the Chancery Division, and

- (a) if not made in a pending cause or matter, shall be made by originating summons; and
- (b) if made in a pending cause or matter, shall be made as part of the relief claimed, or by summons in the cause or matter.

Rule 2.—If the application be made in a pending matter it will have to be intitled in that matter. If made as a substantive application not in any pending cause or matter, it will be by originating summons and accordingly have to be intitled “In the matter of the Trust [*describing it*] and In the matter of The Judicial Trustees Act, 1896” (see Appendix II., Form 27). Order XXX. of the Rules of the Supreme Court will not apply to such an originating summons.

3. *Service of summons.*—(1) The summons shall be served—

- (a) where the application is made by or on behalf of a trustee, on the other trustee (if any); and
- (b) where the application is made by or on behalf of a beneficiary, on the trustees (if any),

and in either case on such (if any) of the beneficiaries as the Court directs.

(2) Where the application is made by or on behalf of a person creating or intending to create a trust, the summons, subject to any direction of the Court, need not be served on any person.

(3) The Court may give any directions it thinks fit, either dispensing with the service of the summons on any person on

whom it is required to be served under this Rule, or requiring the service of the summons on any person on whom it is not required to be served under this Rule.

Rule 3.—The direction of the Court appears to be necessary in all cases as to the persons who should be made respondents to the summons.

4. *Statement to be supplied, on application.*—(1) Where an application is made for the appointment of a judicial trustee by originating summons, the applicant must, when he takes out the summons, supply for the use of the Court a written statement signed by him containing the following particulars so far as he can gain information with regard to them:—

- (a) A short description of the trust and instrument by which it is, or is to be, created, and of the relation which the applicant bears to the trust.
- (b) If a person is nominated as judicial trustee the name and address of the person nominated, and short particulars of the reasons which lead to his nomination.
- (c) If a person is nominated as judicial trustee, a statement whether it is proposed that the person nominated should be remunerated or not.
- (d) Short particulars of the trust property, with an approximate estimate of its income and capital value.
- (e) Short particulars of the incumbrances (if any) affecting the trust property.
- (f) A statement whether it is proposed that the judicial trustee should be a sole trustee or should act jointly with other trustees.
- (g) Particulars as to the persons who are in possession of the documents relating to the trust.
- (h) The names and addresses of the beneficiaries and short particulars of their respective interests.
- (i) Any exceptional circumstances specially affecting the administration of the trust.

(2) An affidavit by the applicant verifying the statement shall be sufficient *prima facie* evidence of the particulars contained in the statement.

(3) Where the applicant cannot gain the information necessary for making the required statement on any point, he must mention the fact in his statement.

Rule 4.—For Form of Statement and affidavit in support see Appendix II., Forms 28 and 29. The Rule requires the person who makes this statement to supply the information so far as he can gain it.

5. *Removal of restriction as to appointment of certain persons to be trustees.*—(1) The Court shall not be precluded by any existing practice as to the appointment of trustees from appointing any person to be a judicial trustee by reason of that person being a beneficiary, or a relation or husband or wife of a beneficiary, or a solicitor to the trust or to the trustee or to any beneficiary, or a married woman, or standing in any special position with regard to the trust.

(2) A person may be appointed to be a judicial trustee of a trust although he is already a trustee of the trust.

Rule 5.—This is a very important deviation from the usual practice. Generally the Court is very reluctant to appoint as trustees the persons mentioned in this Rule. It is, however, no doubt considered safe to relax the practice in the case of the appointment of a judicial trustee, the Court having considerable hold over such a trustee by reason of the security he will have to give (see Rule 9).

It is also to be noticed that the Court can appoint an existing trustee a judicial trustee of a fund; hence trustees of a fund can be converted into judicial trustees.

6. *Vesting orders.*—On the appointment of any person to be judicial trustee the Court shall make such vesting or other orders and exercise such other powers as may be necessary for vesting the trust property in the judicial trustee, either as sole trustee or jointly with other trustees as the case requires.

Rule 6.—The "other powers" here mentioned would doubtless comprise the power of ordering the execution of deeds, or the doing of other acts by an existing trustee, or even a beneficiary, where such execution or act is necessary to the proper vesting in the judicial trustee of the trust fund.

APPOINTMENT OF OFFICIAL OF COURT TO BE JUDICIAL TRUSTEE.

7. *Official judicial trustee.*—(1) When an official of the Court is appointed judicial trustee, the official solicitor of the Court shall (subject to the provisions hereinafter contained in Rules 29, 30, and 31) be so appointed, unless, for special reasons, the Court directs that some other official of the Court should be so appointed.

(2) Any official of the Court appointed to be a judicial trustee shall, on his ceasing to hold office, cease to be such a trustee without any formal resignation.

(3) Where an official of the Court is judicial trustee, any trust property vested in or held by him shall be vested in and held by him under his official title and not in his own name.

(4) Where an official of the Court appointed to be a judicial trustee of a trust dies, or ceases to hold office, his successor in office shall, unless the Court otherwise directs, become judicial trustee of the trust without any Order of the Court or formal appointment, and the trust property shall, without any conveyance, assignment, or transfer, in such a case become vested in the successor as it was vested in his predecessor in office.

(5) For the purpose of the definition of "official of the Court" in Section 5 of the Act, any paid office in or connected with the Court shall be a prescribed office.

(6) Where an official of the Court is judicial trustee it shall be lawful for the Bank of England and Bank of Ireland, and for any other corporation, company, or public body (all of which other bodies are hereinafter included in the term "company"), to open and keep accounts of stocks, shares, annuities, and securities (all of which are hereinafter included in the term "stock"), in the name of such official under his official *title* without naming him, and the dividends on such stock may from time to time be received, and such stock, or any part thereof, may from time to time be transferred by the person for the time being holding such office without any order or direction of the Court as if the same stood in his own name. And without any order or direction of the Court such official may, by letter of attorney, authorise the Bank of England, or the Bank of Ireland, or all or any of their proper officers, to sell and transfer all or any part of the stock from time to time standing in the books of the said Banks on such account, and to receive the dividends due and to become due thereon. And where, according to the practice of any company (other than the said Banks), such stock is accustomed to be sold and transferred, or the dividends to be received by letter of attorney, such official may authorise such company or the proper officer or officers thereof, or *any other person*, to sell and transfer all or any part of the stock from time to time standing in the books of such company on such account, and to receive the dividends due and to become due thereon. And, notwithstanding Section 20 of 29 & 30

Vict. c. 39, no request of the Treasury shall be necessary to authorise any such account of Government stocks and annuities to be opened, and no order in writing of the Treasury shall be necessary for the sale or transfer of any such Government stocks or annuities.¹

(7) Notwithstanding anything in these Rules contained, where an official of the Court is sole judicial trustee, the trust funds and the title deeds, certificates, and other documents which are evidence of the title of the trustee to any of the trust property, and all receipts on behalf of the trust shall be dealt with, and all payments on behalf of the trust shall be made, and accounts shall be kept in such manner and subject to such regulations as the Treasury may direct.²

ADMINISTRATION OF THE TRUST.

8. *Statement of trust property.*—(1) A judicial trustee must, unless in any case the Court considers that it is unnecessary, as soon as may be after his appointment, furnish the Court with a complete statement of the trust property, accompanied with an approximate estimate of the income and capital value of each item.

(2) It shall be the duty of the judicial trustee to give such information to the Court as may be necessary for the purpose of keeping the statement of the trust property correct for the time being.

Rule 8.—This statement of the trust property is, apparently, in addition to the statement to be furnished to the Court when the application for the appointment of a judicial trustee is made. The intention clearly is that the trustee shall, as soon as he can acquaint himself with the trust funds, give the Court full information as to their amount and yield, and that he shall from time to time keep this statement up to date.

9. *Security.*—(1) A judicial trustee, if not an official of the Court, must give security to the Court for the due application of the trust property, unless the Court dispenses with security under this Rule.

(2) The Court may on the appointment of a judicial trustee, or at any time during his continuance in office as judicial trustee, dispense with security on the application either of the person who is to be appointed or is judicial trustee, or of any person appearing

¹ This Rule shall be read with The Judicial Trustee Rules, 1897 (18th March, 1899).

² This Rule shall be construed as one with The Judicial Trustee Rules, 1897 (9th April, 1900).

to the Court to be interested in the trust, and shall do so where a judicial trustee is appointed on the application of a person creating or intending to create a trust, and that person desires that security should be dispensed with, unless for special reasons the Court considers that security is in such a case necessary or desirable.

(3) The security must be given, either by recognisance, bond, or otherwise as the Court directs, and with such sureties as the Court approves.

(4) If the Court is satisfied that sufficient provision is made for the safety of the capital of the trust property, the amount of the security shall, in ordinary cases, be an amount exceeding by twenty per centum the income of the trust property as estimated by the Court.

(5) The Court may at any time require that the amount or nature of the security given by a judicial trustee under this Rule be varied, or that security be given where it has previously been dispensed with, and a judicial trustee shall comply with any such requirement.

(6) It shall be a condition of every recognisance, bond, or other form of security given under this Rule that the judicial trustee shall give immediate notice to the Court of the death or insolvency of any of his sureties.

(7) Any recognisance, bond, or other form of security given for the purpose of this Rule may be vacated in such manner and subject to such conditions as the Court may direct.

(8) Where security is not dispensed with, the appointment of a person to be judicial trustee shall not take effect until he has given the security required by the Court under this Rule.

(9) Any premium payable by a judicial trustee to any guarantee company on account of his security may, if the Court so directs, be paid out of the trust property.

Rule 9.—This Rule amply provides for security being given by the judicial trustee though the Court may in the cases therein mentioned dispense with it. It will often be found convenient to have the intervention of a guarantee company, in which case sub-rule 9 permits the premium payable to such company being paid out of the trust property. Sub-rule (4) appears to mean that if the Court is satisfied as to the safety of the capital of the fund by its being properly invested, then the security to be given by the trustee must exceed by twenty per centum the income of the property.

10. *Trust Account at bank and custody of documents.*—(1) When a judicial trustee is appointed, a separate account for receipts and payments on behalf of the trust must be kept in the name of the trustees at some bank approved by the Court.

(2) All title deeds and all certificates and other documents which are evidence of the title of the trustee to any of the trust property shall be deposited either with that bank or in such other custody as the Court directs.

(3) The deeds or documents must be deposited in the names of the trustees, and the judicial trustee must give notice to the body or person with whom the deeds or documents are so deposited not to deliver any of them over to any person except on a request signed by the judicial trustee and countersigned by the officer of the Court, and also to allow any person authorised by the officer of the Court in writing to inspect them during business hours.

(4) The judicial trustee must deposit with the Court a list of all deeds or documents deposited in any custody in pursuance of this Rule, and must give information to the Court from time to time of any variation to be made in the list.

(5) The judicial trustee must, if at any time directed by the Court, give an order to the bank at which the trust account is kept not to pay at any one time any sum over a specified amount out of the trust account, except on an order countersigned by the officer of the Court.

(6) Any payments on account of the income of the trust property may be provided for by means of a standing order to the Bank at which the trust account is kept.

(7) The Court may give such directions to the judicial trustee as may, in the opinion of the Court, be necessary or expedient for carrying this Rule into effect, and for securing the safety of the trust property.

(8) Where an official of the Court is judicial trustee, the Court may direct that, instead of a separate account of the receipts and payments on behalf of the trust being kept at some bank approved by the Court, all receipts on behalf of the trust may be dealt with, and all payments on behalf of the trust may

be made, in such manner; and subject to such regulations as to the accounts to be kept of the receipts and payments and the procedure to be followed in dealing therewith, as the Treasury direct.

Rule 10.—This Rule sufficiently explains itself. It comprises a code of careful regulations for the guidance and direction of the judicial trustee.

By The Interpretation Act, 1889, the expression “the Treasury” means the Lord High Treasurer for the time being, or the Commissioners for the time being of Her Majesty’s Treasury.

11. *Judicial trustee not to keep money in his hands.*—A judicial trustee must pay all money coming into his hands on account of his trust without delay to the trust account at the bank, and if he keeps any such money in his hands for a longer time than the Court considers necessary shall be liable to pay interest upon it, at such rate not exceeding five per centum, as the Court may fix for the time during which the money remains in his hands.

12. *Directions to judicial trustees.*—(1) A judicial trustee may at any time request the Court to give him directions as to the trust or its administration.

(2) The request must be accompanied by a statement of the facts with regard to which directions are required, and by the fee required under these Rules in respect of a communication from the Court with regard to the administration of the trust.

(3) The Court may require the trustee or any other person to attend at Chambers if it appears that such an attendance is necessary or convenient for the purpose of obtaining any information or explanation required for properly giving directions, or for the purpose of explaining the nature of the directions.

Rule 12.—A summons is not necessary for an application to the Court by a judicial trustee for directions, unless the Court deems it necessary (see Rule 28). As to the fee see the Schedule to the Rules (p. 444, *post*).

13. *Power to dispense with formal evidence.*—The Court, if satisfied that there is no reasonable doubt of any fact which affects the administration of a trust by a judicial trustee, may give directions to the judicial trustee to act without formal proof of the fact.

ACCOUNTS AND AUDIT.

14. *Accounts and audit.*—(1) The Court shall give directions to a judicial trustee as to the date to which the accounts of the trust are to be made up in each year, and shall fix in each year the time after that date within which the accounts are to be delivered to it for audit.

(2) The accounts shall in ordinary cases be audited by the officer of the Court; but the Court, if it considers that the accounts are likely to involve questions of difficulty, may refer them to a professional accountant for report, and order the payment to him of such amount in respect of his report as the Court may fix.

15. *Filing and inspection of accounts.*—(1) The accounts of any trust of which there is a judicial trustee, with a note of any corrections made upon the audit, shall be filed as the Court directs.

(2) The judicial trustee shall send a copy of the accounts, or, if the Court thinks fit, of a summary of the accounts, of the trust to such beneficiaries or other persons as the Court thinks proper.

(3) The Court may, if it thinks fit, having regard to the nature of the relation of the applicant to the trust, allow any person applying to inspect the filed accounts so to inspect them on giving reasonable notice to the officer of the Court.

Rule 15.—This Rule provides ample opportunity for examination of the accounts of a judicial trustee.

16. *Deductions allowed.*—A judicial trustee shall, unless the Court otherwise directs, be allowed on the audit of his accounts deductions made on account of his remuneration and allowances under these Rules, and also on account of the fees paid by him under these Rules, but shall not be allowed any deduction on account of the expenses of professional assistance, or his own work or personal outlay, unless the deduction has been authorised by the Court in pursuance of the Act, or the Court is satisfied that the deduction is justified by the strict necessity of the case.

REMUNERATION AND ALLOWANCES.

17. *Remuneration of judicial trustee.*—(1) Where a judicial trustee is to be remunerated the remuneration to be paid to him shall be fixed by the Court, and may be altered by the Court from time to time.

(2) In fixing the remuneration, regard shall be had to the duties entailed upon the judicial trustee by the trust

(3) The Court may make, if it thinks fit, special allowances to judicial trustees for the following matters, to be paid out of the trust property—

- (a) For the statement of trust property prepared by a judicial trustee on his appointment, an allowance not exceeding ten guineas.
- (b) For realising and reinvesting trust property, where the property is realised for the purpose of reinvestment, an allowance not exceeding one and a half per centum on the amount realised and reinvested.
- (c) For realising or investing trust property in any other case, an allowance not exceeding one per centum on the amount realised or invested.

(4) The Court may also in any year make a special allowance to a judicial trustee, if satisfied that in that year more trouble has been thrown upon the trustee by reason of exceptional circumstances than would ordinarily be involved in the administration of the trust.

(5) Where a trustee is remunerated, any allowance under this Rule may be paid in addition to his remuneration.

(6) Any remuneration or allowance payable to a judicial trustee shall be paid or allowed to him at such times and in such manner as the Court directs.

Rule 17.—This Rule provides for “special allowances” in addition to the remuneration fixed by the Court.

18. *Application of remuneration of official of the Court.*—Where an official of the Court is appointed to be a judicial trustee, any remuneration, allowances, or other payments payable to him on account of his services as trustee shall be paid, accounted for, and applied in such manner as the Treasury direct.

19. *Forfeiture of remuneration.*—(1) If the Court is satisfied that a judicial trustee has failed to comply with the Act, or with these Rules, or with any direction of the Court or officer of the Court made in accordance with the Act or these Rules, or has otherwise

misconducted himself in relation to the trust, the Court may order that the whole or any part of the remuneration of the trustee be forfeited.

(2) This Rule shall not affect any liability of the judicial trustee for breach of trust or to be removed or suspended.

(3) A judicial trustee shall have an opportunity of being heard by the Court before any Order is made for the forfeiture of his remuneration or any part of it.

REMOVAL AND SUSPENSION OF JUDICIAL TRUSTEE.

20. *Suspension of judicial trustee.*—(1) The Court may at any time, either without any application or on the application of any person appearing to the Court to be interested in the trust, suspend a judicial trustee if the Court considers that it is expedient to do so in the interests of the trust, and a judicial trustee while suspended shall not have power to act as trustee.

(2) When a judicial trustee is suspended, the Court shall cause notice to be given to such of the persons appearing to the Court to be interested in the trust as the Court directs, and also to the persons having the custody of the trust property, and shall give any other directions which appear necessary for securing the safety of the trust property.

Rule 20.—The Court could under this Rule issue stop orders preventing the funds being dealt with.

Apparently a summons is not necessary for the *suspension* merely of a trustee (see Rule 28, Sub-rule 1); *sed contra* if the trustee is to be removed (see Rule 21, Sub-rule 2). It is, however, likely that the Court would, under Rule 28, direct a summons to be taken out in order to clearly have before it the grounds urged for the trustee's suspension.

21. *Removal of judicial trustee.*—(1) The Court may, either without any application or on the application of any person appearing to the Court to be interested in the trust, remove a judicial trustee if the Court considers that it is expedient to do so in the interests of the trust.

(2) Any application to remove a judicial trustee must be made by summons.

(3) A judicial trustee shall not be removed by the Court without an application for the purpose, except after notice has been given

to him by the Court of the grounds on which it is proposed to remove him, and of the time and place at which the matter will be heard.

(4) The Court shall cause a copy of the notice to the trustee to be sent to such of the persons appearing to the Court to be interested in the trust as the Court directs, and the same procedure shall be followed in the matter so far as possible as on a summons to remove a judicial trustee.

Rule 21.—The application for removal of a judicial trustee must be made by summons (see Sub-rule 2, and also Rule 28, Sub-rule 1).

For summons for removal of a judicial trustee see Appendix II., Form 30.

The Court can of its own mere motion remove a judicial trustee, but must first give him and other persons notice as provided in Sub-rules 3 and 4.

22. *Inquiry into conduct of judicial trustee.*—Where an inquiry into the administration by a judicial trustee of any trust, or into any dealing or transaction of a judicial trustee, is ordered, the inquiry shall, unless the Court otherwise directs, be conducted by the officer of the Court, and he shall have the same powers in relation thereto as he has in relation to any other inquiry directed by the Court.

RESIGNATION AND DISCONTINUANCE OF JUDICIAL TRUSTEE.

23. *Resignation of judicial trustee.*—(1) If a judicial trustee desires to be discharged from his trust he must give notice to the Court, stating at the same time what arrangements it is proposed to make with regard to the appointment of a successor.

(2) The Court shall give facilities for the appointment on a proper application of an official of the Court to be judicial trustee in place of a judicial trustee who desires to be discharged, in cases where no fit and proper person appears available for the office, or where the Court considers that such an appointment is convenient or expedient in the interests of the trust.

24. *Discontinuance of judicial trustee.*—(1) Where there is a judicial trustee of a trust, the Court may at any time, on the application made by summons of any person appearing to the Court to be interested in the trust, order that there shall cease to be a judicial trustee of the trust, whether the person who is judicial trustee continues as trustee or not.

(2) If the Court is satisfied that all the persons appearing to the Court to be interested in the trust concur in an application under this Rule, the Court shall accede to the application, and in any case shall ascertain as far as may be the wishes of those appearing to the Court to be interested in the trust with regard to the application.

(3) Where an order is made under this Rule the Court shall make all such orders as may be necessary for carrying it into effect, and where, in pursuance of any such order, a new trustee is appointed in the place of an official of the Court, shall make all such vesting or other orders and exercise all such other powers as may be necessary for vesting the trust property in the new trustee, either as sole trustee or jointly with other trustees as the case requires.

Rule 24.—For Form of Application see Appendix II., Form 31.

SPECIAL TRUSTS.

25. *Executors and administrators.*—(1) Any person who is an executor or administrator may be appointed a judicial trustee for the purpose of the collection and distribution of the estate of a deceased person in the same manner and subject to the same provisions as in the case of an ordinary trust.

(2) Where an administrator has given an administration bond, he need not give security as a judicial trustee under these Rules unless the Court directs that he is to do so.

26. *Special trusts.*—(1) An official of the Court shall not be appointed or act as judicial trustee for any persons in their capacity as members or debenture holders of, or being in any other relation to, any incorporated or unincorporated company or any club.

(2) Where the circumstances of any trust of which an official of the Court is a judicial trustee, or of which it is proposed to appoint an official of the Court to be a judicial trustee, involve the carrying on of any trade or business, special intimation of the fact shall be given to the Court either by the judicial trustee or by the person making the application for the appointment of the judicial trustee, as the case may be, and the Court shall specially consider the facts of the case with a view to determining

whether the official of the Court shall continue or be appointed as judicial trustee, and whether any special conditions should be made or directions given with a view to ensuring the proper supervision of the trade or business.

Rule 26.—Rule 7, Sub-rule 5, defines “official of the Court” as any paid officer “in or connected with the Court.”

The special circumstances referred to in Sub-rule 2 must be mentioned in the statement prescribed by Rule 4.

EXERCISE OF THE POWERS OF THE COURT.

27. *Exercise of powers of Court.*—For the purpose of the Act or these Rules the officer of the Court may exercise any power which may be exercised by the Court (including the power of making an order for the appointment of a judicial trustee or making any vesting order), and may perform any duty to be performed by the Court, and may hear and investigate any matter which may be heard or investigated by the Court, subject in any case to the right of any party to bring any particular point before the Judge.

28. *Communication between judicial trustee and Court.*—(1) It shall not be necessary to take out a summons for any purpose under the Act or these Rules, except in cases where a summons is required by these Rules, or where the Court directs a summons to be taken out.

(2) Where a judicial trustee desires to make any application or request to the Court, or to communicate with the Court as to the administration of his trust, he may do so by letter addressed to the officer of the Court without any further formality.

(3) The Court may give any direction to a judicial trustee with regard to the administration of his trust by letter signed by the officer of the Court, and addressed to the trustee, without drawing up any order or formal document.

(4) For the purpose of the attendance at Chambers of the judicial trustee or any other person connected with the trust for purposes relating to the administration of the trust, the officer of the Court may make such appointments as he thinks fit by letter without the service of formal notices.

(5) Any document may be supplied for the use of the Court by leaving it with, or sending it by post to, the officer of the Court.

Rule 28.—For the definition of “officer of the Court” see Rules 7 and 33.

DISTRICT REGISTRIES.

29. *District Registries*.—(1) An originating summons under these Rules, for the purpose of an application to appoint a judicial trustee, may be sealed and issued in a District Registry, and appearances thereon shall be entered in that Registry.

(2) Where a judicial trustee of a trust is appointed on an originating summons taken out in a District Registry, or an application in any cause or matter pending in a District Registry, all proceedings with respect to the trust and the administration thereof under the Act or these Rules shall, unless the Court otherwise directs, be taken in the District Registry.

(3) Where proceedings under the Act or these Rules are taken in the District Registry, the official of the Court to be appointed judicial trustee, where an official of the Court is to be so appointed, shall not be the official solicitor, unless the Court for special reasons otherwise directs.

(4) For the purpose of the Act and these Rules the Court may transfer any trust of which there is a judicial trustee from a District Registry to London, or from London to a District Registry, or from one District Registry to another District Registry, according as it appears convenient for the administration of the trust.

PALATINE COURTS.

30. *Palatine Courts*.—(1) These Rules shall apply to a Palatine Court as respects trusts within the jurisdiction of such Court, subject to such modifications (if any) as may be made by Rules of that Court for the purpose of making these Rules properly applicable, having regard to any special practice of the Court or the duties of the officers attached to the Court.

(2) Where proceedings under the Act or these Rules are taken in the Palatine Court, the official of the Court to be appointed judicial trustee, where an official of the Court is to be so appointed, shall not be the official solicitor, unless the Palatine Court for special reasons otherwise directs

COUNTY COURTS.

31. *County Court jurisdiction*.—(1) For the purpose of the Act and these Rules the jurisdiction of the County Court Judge shall extend to any trust in which the trust property does not exceed

in value five hundred pounds, as if that jurisdiction had been given under Section 67 of The County Courts Act, 1888, but that jurisdiction shall be exercised only in a Metropolitan County Court, or in a County Court for the time being having bankruptcy jurisdiction.

(2) Where the district of any County Court (other than a Metropolitan County Court) or any part of such a district is attached for the purpose of bankruptcy jurisdiction to some Court other than the County Court of the district, that district or part shall be attached to the same Court for the purpose of jurisdiction under the Act and these Rules.

(3) Where proceedings under the Act or these Rules are taken in the County Court, the official of the Court to be appointed judicial trustee, where an official of the Court is to be so appointed, shall not be the official solicitor, unless the Court for special reasons otherwise directs.

(4) In the application of these Rules to the County Court a petition shall be substituted for a summons, whether an ordinary or an originating summons.

(5) For the purposes of this Rule, the expression "Metropolitan County Court" means any of the County Courts mentioned in the Third Schedule of The Bankruptcy Act, 1883.

FEEs.

32. *Fees*.—(1) The fees mentioned in the Schedule to these Rules shall be paid in respect of the matters therein mentioned.

(2) The fees paid by a judicial trustee may be deducted out of the income of the trust property unless the Court otherwise directs.

(3) Any fees payable under these Rules may be remitted by post, and may be so remitted in any manner except by means of postage stamps or coin.

(4) All fees payable under these Rules in the High Court, Palatine Court, or County Court shall, except as provided by these Rules, be subject to similar provisions as to payment, account, and application as other fees payable in those Courts respectively.

OFFICER OF THE COURT.

33. *Meaning of "Officer of Court."*—In these Rules the expression "officer of the Court" means—

- (a) As regards proceedings in the High Court, other than proceedings in a District Registry, the Chancery Master, that is to say, the Master attached to the Chambers of the Judge of the Chancery Division to whom the matter is assigned; and
- (b) As regards proceedings in a District Registry, any Registrar of that Registry; and
- (c) As regards proceedings in a Palatine Court, any Registrar of that Court; and
- (d) As regards proceedings in the County Court, the Registrar of the County Court.

SUPPLEMENTAL.

34. *Rules to be construed as part of the general Rules of Court.*—These Rules shall be construed, so far as they relate to the High Court, as one with the Rules of the Supreme Court, 1883, and any Rules amending those Rules, so far as they relate to a Palatine Court as one with the Rules of that Court, and so far as they relate to the County Court as one with the County Court Rules, 1889, and any Rules amending those Rules.

35. *Application of Interpretation Act (52 & 53 Vict. c. 63).*—The Interpretation Act, 1889, shall apply for the purpose of the interpretation of these Rules as it applies for the purpose of the interpretation of an Act of Parliament.

(Signed) HALSBURY, C.

31st August, 1897.

SCHEDULE.

FEES.

The following Fees shall be payable under these Rules:—

	£	s.	d.
1. In respect of any thing or matter for which a fee is provided under the Orders in force for the time being with regard to Supreme Court, Palatine Court, or County Court fees as the case may be			The fee so provided.
2. In respect of any communication from the Court with regard to the administration of the trust	0	2	6
3. For filing the statement of the trust property	0	10	0
4. For filing any alteration in the statement -	0	5	0
5. For filing the accounts of the trust	0	5	0
6. For filing any other document relating to the trust	0	2	6
7. For auditing the accounts of the trust when audited by the officer of the Court, for every £100, or fraction of £100, of the gross amount received as income of the trust without deducting any payments	0	2	6
8. On the audit of the accounts of the trust where they are referred to a professional accountant for report			A fee equal to the amount paid to the accountant.
9. On the inspection of filed accounts for each hour or part of an hour occupied	0	2	6
Not exceeding on one day	0	10	0

APPENDIX I.

PART D.

THE PUBLIC TRUSTEE RULES, 1907.

ARRANGEMENT OF RULES.

INTERPRETATION.—Rules 1 and 2.

ESTABLISHMENT OF OFFICE.—Rule 3.

OFFICES.—Rule 4.

DEPUTY PUBLIC TRUSTEES.—Rule 5.

SECURITY.—Rule 6.

TRUSTEESHIPS.—Rules 7 to 13 inclusive.

ADMINISTRATION OF SMALL ESTATES.—Rules 14 to 17 inclusive.

ADMINISTRATION OF TRUSTS AND ESTATES.—Rules 18 to 35 inclusive.

The Rules comprised under this head are those relating to the general powers and duties of the Public Trustee in the administration of trusts and estates committed to his charge.

CORPORATE BODIES AS CUSTODIAN TRUSTEES.—Rule 36.

INVESTIGATION AND AUDIT OF TRUST ACCOUNTS.—Rules 37, 38, and 39.

MISCELLANEOUS.—Rules 40 to 43 inclusive.

Rule 40 deals with the mode in which notices or applications required to be given or made for the purposes of the Act or Rules are to be served or made.

Rule 41 provides for the representation of any person who is an infant, idiot, or lunatic, and who might, but for such disability, have made any application, given any consent, done any act, or been party to any proceeding in pursuance of the Rules.

THE PUBLIC TRUSTEE RULES, 1907.

I, the Right Honourable Robert Threshie, Baron Loreburn, Lord High Chancellor of Great Britain, with the concurrence of the Treasury, by virtue and in pursuance of The Public Trustee Act, 1906, and of all other powers and authorities enabling me in this behalf, do make the following Rules for carrying into effect the objects of that Act.

INTERPRETATION.

1. In these Rules the expression "the Act" means the Public Trustee Act, 1906; and unless there is anything in the context or in the Act inconsistent therewith—

The expression "trust instrument" includes any instrument by which a trust is created;

The expression "trust property" includes all property subject to a trust, or comprised in an estate, which is proposed to be administered by the Public Trustee;

The expression "Deputy" means a Deputy Public Trustee.

2. The Interpretation Act, 1889, applies for the purpose of the interpretation of these Rules as it applies for the purpose of the interpretation of an Act of Parliament.

ESTABLISHMENT OF OFFICE.

3. The Office of Public Trustee is hereby established.

OFFICES.

4.—(1) The Central Office of the Public Trustee shall be situate in London.

(2) Branch offices may from time to time be established as may be prescribed by the Lord Chancellor by notice in the London Gazette.

DEPUTY PUBLIC TRUSTEE.

5. There shall be Deputy Public Trustees at any branch offices so established who shall be officers of the Public Trustee, and shall have the powers and perform the duties assigned to

them by or under these Rules. Their number shall be such as the Lord Chancellor, with the sanction of the Treasury, may from time to time prescribe, and every such appointment shall be notified in the London Gazette.

SECURITY.

6. Security shall be given by such persons employed under the Act as the Treasury may direct for the due performance of their duties, and for the due accounting for and payment of all moneys received by them in pursuance of the Act and these Rules. The security shall be for such sum and shall be given in such manner and form as the Treasury shall order in the case of each such person, and the Treasury may at any time require that the amount or nature of any such security be varied.

TRUSTEESHIPS.

7.—(1) Subject to the Act and these Rules the Public Trustee is authorised—

- (a) to accept as ordinary trustee and to act as custodian trustee of any trust created by any trust instrument or arising upon an intestacy; and
- (b) to accept by the name of the Public Trustee probates or letters of administration of any kind:

Provided that he shall not accept the trusts of any instrument made solely by way of security for money.

8. The Public Trustee may if he thinks fit—

- (1) act as custodian trustee of a trust which involves the management or carrying on of any business but upon the conditions that (a) he shall not act in the management or carrying on of such business, and (b) he shall not hold any property of such a nature as will expose the holder thereof to any liability except under exceptional circumstances and when he is satisfied that he is fully indemnified or secured against loss; and
- (2) accept as ordinary trustee under exceptional circumstances a trust which involves the management or carrying on of any business, but upon the conditions that except with the consent of the Treasury he shall only carry

on the same (a) for a short time not exceeding eighteen months, and (b) with a view to sale disposition or winding up, and (c) if satisfied that the same can be carried on without risk of loss.

9. (1) A testator may appoint the Public Trustee to be trustee or custodian trustee under any testamentary instrument without previously applying to him for his consent to act as such.

(2) No such appointment by a testator shall have effect, and no appointment of the Public Trustee to be trustee or custodian trustee shall be made except by a testator, unless and until (in either case) the consent of the Public Trustee to act as such trustee shall have been applied for and obtained in accordance with these Rules: Provided that in the case of any such appointment by a testator the Public Trustee shall at any time after the fact of his appointment shall have come to his knowledge be at liberty to act as if such application had been received by him.

10. (1) An application to the Public Trustee to act as trustee or custodian trustee may be made

(a) where the appointment has been made by a testator—by any trustee or beneficiary under the testamentary instrument; and

(b) in the case of the estate of an intestate—by any person appearing to be beneficially interested in the estate; and

(c) in any case—by the persons or any one of the persons having power under the Act to make the appointment.

(2) It shall be the duty of any person appointed by a testator to be a co-trustee with the Public Trustee, and not renouncing or disclaiming the trust, to give to the Public Trustee notice in writing of such appointment as soon as practicable after the same has come to his knowledge.

11. (1) Any application under the last preceding Rule shall be made in writing addressed to the Public Trustee at his office in London, or any branch office for the time being in existence, and may be left at or sent by post to any such office as aforesaid.

(2) Upon receiving any such application the Public Trustee may require to be produced to him the trust instrument (if any), and may require to be supplied to him a copy of that instrument,

and of any other document affecting the trust, and such particulars as to the nature and value of the trust property, and the liabilities (if any) attaching to such property, or the holder thereof, and the names and places of abode of any beneficiaries and trustees under the trust, and such other information relating to the trust as he may consider it desirable to obtain in any particular case.

12. As soon as may be after receiving any such application the Public Trustee shall take into consideration upon such evidence as may appear to him sufficient—

- (a) the gross capital value of the trust property;
- (b) the mode of investment and the condition of the trust property;
- (c) the situation, tenure, and character of any land comprised in the trust property;
- (d) any liabilities attaching to the trust property or the holder thereof;
- (e) the places of abode and circumstances of the beneficiaries; and
- (f) all the circumstances of the case.

13. (1) Upon any application the Public Trustee shall decide whether the same ought to be accepted or refused, and shall forthwith give notice to the applicant of such acceptance or refusal, and in case of acceptance shall execute an instrument expressing his consent to act in the trust.

(2) Upon the acceptance of any application the Public Trustee shall consider and determine whether the trust shall be administered from the Central Office or from a branch office, and shall give directions accordingly, and any such direction may at any time be rescinded or varied by the Public Trustee at his discretion.

ADMINISTRATION OF SMALL ESTATES.

14. (1) An application under Section 3 (1) of the Act shall be made in the manner provided by Rule 11 hereinbefore contained.

(2) Upon receiving any such application the Public Trustee shall require to be supplied to him such evidence as to the value

of the estate, and the circumstances of the persons beneficially entitled, and such other information relating thereto as he may consider it desirable to obtain in any particular case.

15. (1) If it is not proved to the satisfaction of the Public Trustee that the gross capital value of the estate is less than £1000, or if it does not appear to him that the persons beneficially entitled are persons of small means, or if he sees any other good reason for refusing the application, he shall refuse the same, and shall forthwith give notice to the applicant of such refusal.

(2) In any other case the Public Trustee shall make in respect of the estate the declaration mentioned in Section 3 (2) of the Act, and shall give notice to the applicant that the application is accepted, and shall take such other steps as may be necessary or proper to enable him to administer the estate; and any person having the custody of the probate or letters of administration or other document relating to the estate shall, upon the request in writing of the Public Trustee, deliver the same to him or as he shall direct.

(3) A refusal under this Rule shall not prevent the Public Trustee from exercising with respect to the estate any powers (other than powers under Section 3 of the Act) exercisable by him with respect thereto under the Act and these Rules, if duly appointed to exercise the same.

(4) Upon the acceptance of any application the Public Trustee shall consider and determine whether the estate shall be administered from his Central Office or from a branch office, and shall give directions accordingly, and any such direction may at any time be rescinded or varied by the Public Trustee at his discretion.

16. For the purposes of the administration the Public Trustee shall (subject as hereinafter provided) have all the administrative powers and authorities exercisable by a Master of the Supreme Court acting in the administration of an estate.

17. (1) The Public Trustee may in manner hereinafter provided and without judicial proceedings take the opinion of the High Court upon any question arising in the course of an administration.

(2) The duty of advising upon any such question shall be assigned by the Lord Chancellor to a particular Judge of the

Chancery Division: Provided that in the absence or upon the request of such Judge any other Judge of that Division, and during vacation any Judge of the High Court, may act for such Judge for the purposes of this Rule.

(3) Any such question shall be submitted to the Judge in such manner and at such time as he may direct, and shall be accompanied by such statement of facts, documents, and other information as he may require, and the Public Trustee shall, if the Judge so desires, attend upon him at such time and place as the Judge may appoint.

(4) The Judge may before giving his opinion require the attendance of, or communicate with, any person interested in the estate as trustee or beneficiary, but no such person shall have a right to be heard by the Judge unless he otherwise directs.

(5) The Judge shall give his opinion to the Public Trustee, and the Public Trustee shall act in accordance with such opinion, and shall upon the request in writing of any such interested person communicate to him the effect of such opinion.

ADMINISTRATION OF TRUSTS AND ESTATES.

18. Subject to the provisions of the Act and of these Rules and to the terms of any particular trust the Public Trustee may, in the administration of any trust or estate, take and use professional advice and assistance in regard to legal and other matters, and may act on credible information (though less than legal evidence) as to matters of fact.

19. (1) There shall be kept at the Central Office in London of the Public Trustee a Register (hereinafter referred to as "the Principal Register") of all trusts in which the Public Trustee is acting as trustee or custodian trustee and of all estates in course of administration under Section 3 of the Act, and whether the same are being administered from his Central Office or from any branch office.

(2) There shall be entered in the Principal Register in respect of each trust or estate—

(a) a distinctive letter and number;

(b) the date of the acceptance of the trust or of the declaration made under section 3 (2) of the Act;

- (c) particulars of the trust property from time to time;
- (d) the name and place of abode of the person in receipt of the income of the trust property;
- (e) a reference to any notice received of any dealing with any beneficial interest in the trust property and of any exercise or release of any power relating to the trust or estate;
- (f) a record of any decision or opinion of the High Court in respect of the trust or estate;
- (g) such records of his decisions and such other particulars as the Public Trustee may think fit.

20. The Public Trustee may invest or retain invested money belonging to any trust or estate and coming to his hands in any investment authorised by the trust instrument or (save as otherwise provided by that instrument) authorised by law for the investment of trust funds and may (save as so provided) retain any investment existing at the date of the commencement of the trust, or (where the trust arises on an intestacy) at the date of the death of the intestate: Provided that he shall not invest in or hold any instrument in such manner as to expose him to liability as the holder thereof, unless he is satisfied that he is fully indemnified or secured against loss.

21. The securities and documents belonging or relating to a trust or estate of which the Public Trustee is a trustee or which he is administering shall if under his control be kept at the bank to the trust or at some other safe place of deposit allowed generally or specially by the Treasury, so far as the convenience of business will admit.

22. (1) A separate account shall be kept for every trust or estate.

(2) A separate account shall be kept of the capital of the trust property and of the mode in which it is from time to time invested, and all dealings with such capital shall be entered in such account.

(3) A separate account shall be kept of the income of the trust property and of the mode in which it is from time to time dealt with by the Public Trustee.

23. The accounts of the Public Trustee shall be audited and the securities held by him verified from time to time to the satisfaction of the Controller and Auditor-General, in accordance with such regulations as the Treasury may make.

24. All payments of money to or from the capital of the trust property shall be made through the bank to the trust or estate.

25. (1) No transfer by the Public Trustee of any securities or assurance by him of any land forming part of the trust property shall be made except under the hand and official seal of the Public Trustee, or under the hand and seal of an officer of the Public Trustee authorised in writing by him to act in that behalf either generally or in any particular case.

(2) Any such transfer or assurance by an officer so authorised shall have the same effect as if the same were made by the Public Trustee under his hand and official seal.

26. All sums payable out of the income or capital of the trust property shall be made by a cheque on a bank signed by the Public Trustee or an officer of the Public Trustee authorised in writing by him to act in that behalf either generally or in any particular case: Provided that in any particular case the Public Trustee may authorise the payment of income by the person liable to pay the same direct to the person entitled to receive the same, or to his bank.

27. (1) The income of the trust property may be paid to the person for the time being entitled to receive the same either through a bank or direct, and where such person is a married woman may be so paid notwithstanding any restraint on anticipation.

(2) Where authority is given to any Corporation or bank to pay any income to any person the books of that Corporation or bank showing the payment of that income in accordance with the authority shall be a sufficient discharge to the Public Trustee.

(3) Where authority is given to any person to pay any income to the bank of the person entitled, the certificate of that bank stating the receipt of that income shall be a sufficient discharge to the Public Trustee.

(4) Where any person is solely entitled to receive any income, without any restraint on anticipation, the Public Trustee may,

on the request in writing of that person, authorise him for such period as the Public Trustee may think fit to collect or arrange for the collection of such income. During the continuance of any such authority such request in writing shall be a sufficient discharge to the Public Trustee in respect of such income.

28. The Public Trustee may, if the special circumstances of the case appear to him to render it desirable, pay to his co-trustee, or allow him to receive, the income of the trust property or any part thereof, on such co-trustee undertaking to apply it in manner directed by the trust.

29. The Public Trustee may make advances for the purposes of any trust or estate in course of administration, or about to be administered, by him, out of any moneys which may be placed at his disposal by the Treasury for that purpose, and upon such terms as he may think proper.

30. The Public Trustee may at any time require a statutory declaration or other sufficient evidence that a person is alive and is the person to whom any money or property is payable or transferable, and may refuse payment or transfer until such declaration or evidence is produced.

31. Where a person appearing to be beneficially entitled to any sum of money under a trust or to be interested in the trust property cannot be found, or it is not known whether he is living or dead, the Public Trustee may apply to the Court for directions as to the course to be taken with reference to such person, and until an Order of the Court is made shall keep any sum payable to such person, and if it is kept for more than six months shall invest the same or deposit the same at interest and shall accumulate the dividends or interest thereof.

32. Upon an application in writing by or with the authority of any person interested in the trust property the Public Trustee—

- (a) Shall permit the applicant or his solicitor or other authorised agent to inspect and take copies of any entry in any register relating to the trust or estate and (so far as the interest of the applicant in the trust property is or may be effected thereby) of any account, notice, or other document in the custody of the Public Trustee;

- (b) Shall at the expense of the applicant supply him or his solicitor or other authorised agent with a copy of any such entry, account, or document as aforesaid, or of any extract therefrom;
- (c) shall give to such applicant or his solicitor or other authorised agent such information respecting the trust or estate and the trust property as shall be reasonably requested in the application and shall be within the power of the Public Trustee.

(2) Subject as aforesaid the Public Trustee shall observe strict secrecy in respect of every trust or estate in course of administration by him.

33. (1) The Public Trustee may in writing authorise any Deputy to exercise and perform (either generally or in relation to any particular case and subject to such conditions and restrictions (if any) as the Public Trustee may impose) all or any of the powers and duties of the Public Trustee under any of the foregoing Rules except—

- (a) the power or duty of determining whether a trust or estate shall be administered from his Central Office or from a branch office; and
- (b) the power of authorising officers of the Public Trustee to transfer securities or assure land or to sign cheques;
- (c) the power of making advances for the purpose of any trust or estate.

(2) Any such authority conditions or restrictions may at any time in like manner be withdrawn or varied by the Public Trustee at his discretion.

34. No Deputy and no firm or member of a firm of solicitors of which such Deputy is a member shall except with the consent in writing of the Public Trustee and subject to such conditions as he may impose act as solicitor or solicitors to a trust or estate which is in course of administration by such Deputy.

35. Any officer of the Public Trustee who shall be authorised by him in writing in that behalf may take any oath, make any declaration, verify any account, and give personal attendance at any court or place.

CORPORATE BODIES AS CUSTODIAN TRUSTEES.

36. (1) The bodies corporate entitled to act as custodian trustee shall be any such incorporated Banking or Insurance or Guarantee or Trust Company or Friendly Society and any such body corporate established for charitable or philanthropic purposes as may be approved by the Public Trustee and the Treasury.

(2) The Public Trustee may require payment by any applicant for such approval of a fee not exceeding Ten Guineas.

(3) Such approval may be granted subject to such conditions as to the rendering by the body corporate, and verification, of periodical returns of business transacted, and fees and other emoluments received, and otherwise, as the Treasury may require either generally or in any particular case.

(4) Any such approval may at any time be withdrawn without reason assigned.

INVESTIGATION AND AUDIT OF TRUST ACCOUNTS.

37. Any application under Section 13 (1) of the Act shall be made to the Public Trustee, and notice thereof shall be given (a) if the applicant is a beneficiary, to every trustee, and (b) if the applicant is a trustee, to each co-trustee and also to the person entitled to the receipt of the income of the trust property.

38. If within three months from the date of the receipt of the notice no solicitor or public accountant shall have been appointed by the applicant and the trustees to conduct the investigation and audit, there shall be deemed to be a default of agreement within the meaning of Section 13 (1) of the Act, and the applicant may apply to the Public Trustee accordingly.

39. The remuneration of the auditor and the other expenses of the investigation and audit shall be such as may be agreed on by the trustees and the person entitled to the receipt of the income of the trust property and the auditor, or (in default of such agreement) determined by the Public Trustee, who shall, in determining the same, have regard to the estimated value of the trust property, the time occupied or likely to be occupied by the investigation and audit, and the other circumstances of the case.

MISCELLANEOUS.

40. (1) Any notice or application required to be given or made for the purposes of the Act or these Rules to the Public Trust may be addressed to the Public Trustee at his office in London, or if the same relates to a trust or estate in course of administration or proposed to be administered from a branch office then at that branch office.

(2) Any notice or application required to be given or made for the purposes of the Act or these Rules to any person other than the Public Trustee may be addressed to that person at his last known place of abode or place of business.

(3) Any such notice or application may be delivered at the place to which it is addressed or may be served by post.

41. Where any person who (if not under disability) might have made any application, given any consent, done any act, or been party to any proceeding in pursuance of these Rules is an infant, idiot or lunatic, the guardian or (as the case may require) the committee or receiver of the estate of such person may make such application, give such consent, do such act, and be party to such proceedings as such person if free from disability might have made, given, done, or been party to, and shall otherwise represent such person for the purposes of these Rules. Where there is no guardian or committee or receiver of the estate of any such infant, idiot or lunatic, or where any person is of unsound mind or incapable of managing his affairs but has not been found lunatic under any inquisition, it shall be lawful for the Court to appoint a guardian of such person for the purpose of any proceedings under these Rules and from time to time to change such guardian.

42. The Public Trustee may frame and cause to be printed and circulated or otherwise promulgated such forms and directions as he may deem requisite or expedient for facilitating proceedings under the Act and these Rules.

43. These Rules may be cited as "The Public Trustee Rules, 1907."

November 29th, 1907.

LOBURN, C.

We, being two of the Lords Commissioners of His Majesty's Treasury, hereby concur in the foregoing Rules.

H. H. ASQUITH.

JOSEPH A. PEASE.

APPENDIX I.

PART E.

THE PUBLIC TRUSTEE (FEES) ORDER, 1909.

WE, the undersigned, being two of the Lords Commissioners of His Majesty's Treasury, with the sanction of the Lord Chancellor, in pursuance of the provisions of The Public Trustee Act, 1906, Section 9, and of all other powers, and for the purpose of fixing the fees to be charged in respect of the duties of the Public Trustee, do hereby order as follows:—

1. In this Order, and in the Schedule hereto (unless the context otherwise requires):—

- (a) Words to which a meaning is assigned by the Public Trustee Rules, 1907, shall have the same respective meanings as in those Rules.
- (b) Words referring to the acceptance of a trust shall be deemed to include a reference to an undertaking to administer an estate under Section 3 of the Act.

2. The Interpretation Act, 1889, applies for the purpose of the interpretation of this Order as it applies for the purpose of the interpretation of an Act of Parliament.

3. Subject as hereinafter provided, the fees mentioned in the Schedule to this Order shall be paid in respect of the duties in that Schedule referred to.

4. If at any time during the continuance of a trust in course of administration by the Public Trustee, any property (not arising from the accumulation of income of the trust property) shall become subject to the trust, in addition to the property comprised therein at the date of the acceptance thereof, there shall be paid in respect

of such additional property a further fee of such amount as would have been payable upon the acceptance of a trust comprising such additional property only.

5. (1) Where it appears to the Public Trustee, upon accepting a trust, that the trust property consists wholly or partially of reversionary interests, or other property not in possession or not readily realisable (all which interests and property are hereinafter referred to as "reversionary property"), he may charge an additional fee, not exceeding one pound, upon acceptance of the trust.

(2) Where such additional fee is charged, then—

- (a) Upon the acceptance of the trust the reversionary property shall be excluded from the trust property for the purpose of ascertaining the amount of the fee payable in pursuance of the Schedule hereto upon such acceptance, and the said fee shall be calculated and paid as if the trust property (if any) other than the reversionary property were alone comprised in the trust; and
- (b) So far as regards the reversionary property, or any part thereof, the date on which the same falls into possession or is realised shall, for the purpose of the ascertainment and payment of the amount of any capital fee payable in pursuance of the Schedule hereto, be deemed to be the date upon which the trust is accepted; and
- (c) For the purpose of ascertaining the amount of the fee payable on such acceptance in respect of the reversionary property or any part thereof, the gross capital value of that property or part at the date at which such fee is payable shall be aggregated with the gross capital value of any other part of the trust property in respect of which the fee on acceptance has been previously paid or become payable.

6. (1) In any case in which it appears to the Public Trustee that the circumstances of a trust or estate in course of administration, or proposed to be administered, by him are, or probably will be, such as to render his duties in relation thereto exceptionally onerous, he may, with the approval of the Treasury, charge a special fee in respect of the performance of such duties in addition to the fees payable in pursuance of the Schedule hereto.

(2) The Public Trustee may make the payment of, or agreement to pay, such special fee a condition of his accepting a trust.

7. In any case in which it appears to the Public Trustee that the circumstances of a trust or estate in course of administration, or proposed to be administered, by him are, or probably will be, such as to render his duties in relation thereto exceptionally simple, or are otherwise of an exceptional character, he may, with the approval of the Treasury, remit any part (not exceeding one half) of any fee payable in respect of the performance of such duties in pursuance of the Schedule hereto.

8. Where two or more trusts or estates in course of administration, or proposed to be administered, by the Public Trustee appear to him to be so connected together as to facilitate the performance of his duties in respect thereof, he may, in his discretion, for the purpose of ascertaining the amount of any fee payable in pursuance of the Schedule hereto in respect of his said duties or any of them, elect to treat the trust properties subject to or comprised in the several trusts or estates, or any of them, as aggregated, so as to form a single trust property: Provided that nothing in this Rule shall affect the incidence of any such fee as between the several trusts or estates.

9. The Public Trustee may, in his discretion, upon the application of any person appearing to be interested in the income or capital of the trust property, commute any fee which, in pursuance of the Schedule hereto, would, but for the commutation, become payable upon that income or upon the withdrawal or distribution of the whole or any part of that capital for a certain sum to be presently paid; and for determining that sum he shall cause a present value to be set on that fee, regard being had to the circumstances and contingencies affecting the rate at which, and the occasion upon which, such fee would, but for the commutation, be payable, and interest being reckoned at three per cent.

10. Where in the opinion of the Public Trustee the income of any trust property is not liable to serious fluctuation, he may from time to time agree with the person interested in such income for the payment and acceptance (in lieu of the income fee payable in pursuance of the Schedule hereto) of a fixed annual income fee of such amount as shall appear to the

Public Trustee approximately equal to the average annual income fee which, but for such agreement, would be payable in respect of such income.

11. The Public Trustee may, with the approval of the Treasury, agree to any mode of payment of any fee payable in pursuance of the Schedule hereto which shall seem to him just and reasonable.

12. For the purposes of the Schedule hereto—(a) the value of any property (other than cash) shall be the price which in the opinion of the Public Trustee such property would fetch if sold in the open market; and (b) income where the same is derived from the carrying of any trade or business shall mean the gross receipts of such trade or business, and, save as aforesaid, shall mean the net annual income payable to a beneficiary.

13. For the purpose of ascertaining the amount of any capital fee payable in pursuance of the Schedule hereto, the date of the acceptance of a trust shall be taken to be either the date upon which the trust is actually accepted (or in the case of reversionary property is to be deemed to have been accepted) or such day, not more than two months earlier or later than that date, as the Public Trustee may determine in each particular case.

14. The Public Trustee (Fees) Order, 1907, is hereby rescinded, but without prejudice to any obligation or arrangement now subsisting with respect to any fee chargeable under that Order.

15. This Order may be cited as "The Public Trustee (Fees) Order, 1909," and shall come into operation on the 1st day of March, 1909.

SCHEDULE.

1.—CAPITAL FEES.

A.—*In respect of the duties of the Public Trustee, acting as Ordinary Trustee or Executor or Administrator or in the administration of a small estate under Section 3 of the Act (except in cases provided for under Head B).*

1. Upon the acceptance of the trust—a fee at the following rates:—

- (a) If the gross capital value of the trust property at the date of such acceptance does not exceed £1000, 15s. per cent. in respect of that value; and

(b) If such gross capital value at the said date exceeds £1000, then—

15s. per cent. in respect of that value up to £1000;

5s. per cent. in respect of any excess of that value over £1000 up to £20,000;

2s. 6d. per cent. in respect of any excess of that value over £20,000 up to £50,000;

1s. 3d. per cent. in respect of any excess of that value over £50,000.

2. Upon the withdrawal (whether upon distribution amongst the beneficiaries or otherwise) of any capital from the trust property—a fee in respect of the value of the property withdrawn at a rate per cent. equal to the rate per cent. at which the fee upon the acceptance of the trust was payable in respect of the entire trust property.

3. Provided that the fees charged under the two preceding clauses of this head shall be so regulated that the total fees so charged in respect of a trust shall not be less than £1.

4. Upon the sale of any land forming part of the trust property—a fee at the rate of 2s. 6d. per cent. in respect of the amount of the purchase money.

B.—*In respect of the duties of the Public Trustee, acting as Custodian Trustee only of any trust, or as Ordinary Trustee in respect of land settled in strict settlement.*

1. Upon any occasion mentioned under Head A—a fee equal to one half of the fee payable under that head upon that occasion.

2. Provided that where the Public Trustee is acting in respect of land settled in strict settlement:—

(a) A re-settlement of the land shall not be deemed to be a withdrawal of capital from the trust property; and

(b) Upon the raising of any money under any trust or power in the trust instrument there shall be charged either a fee at the rate of 2s. 6d. per cent. in respect of the amount so raised, or a fee of £1, whichever shall be the greater.

II.—INVESTMENT FEES.

In respect of the duties of the Public Trustee, acting as Ordinary Trustee or Executor or Administrator or Custodian Trustee or in the administration of a small estate under Section 3 of the Act.

1. Upon the making of any investment (except in any of the cases provided for by any other clause of this division), a fee at the rate of 10s. per cent. in respect of the money to be invested (such fee to include any sum paid by the Public Trustee for brokerage).

2. Upon the making of any investment of income in course of accumulation (except an investment thereof in any of the modes mentioned in Clause 3 of this division), a fee at such rate not being higher than £1 per cent. in respect of the income invested as the Public Trustee, having regard to the time and trouble involved, may determine in each particular case (such fee to include any sum paid by the Public Trustee for brokerage).

3. Upon any purchase of land, or any investment by way of mortgage of, or charge on, property, a fee at the rate of 2s. 6d. per cent. in respect of the amount of the money advanced.

III.—INCOME FEES.

In respect of the duties of the Public Trustee, acting in any of the capacities mentioned under Division II.

Upon the annual income of the trust property (except income in course of accumulation), a fee at the rate of £2 per cent. in respect of that income up to £500, and at the rate of £1 per cent. in respect of any excess of that income over £500: Provided as follows:—

- (a) Where income is paid direct to the person entitled, or to his bank, or is collected by such person, the income fee shall not be charged in respect of that income at a higher rate than £1 per cent.; and
- (b) Where the Public Trustee is acting in respect of land settled in strict settlement, the income fee shall be charged at such rate (not being higher than £1 per cent.) as the Public Trustee, having regard to the time and trouble involved, may from time to time determine in each particular case.
- (c) The minimum income fee shall be 2s. 6d.

IV.—AUDIT FEES.

In respect of the duties of the Public Trustee under Section 13 of the Act.

Upon the performance of any duty under that section, such fee, not being less than 5s. or more than £5, as the Public Trustee shall determine in each particular case, regard being had to the time and trouble involved, the value of the estate, and the other circumstances of the case.

V.—SEARCH FEES.

Where application is made to the Public Trustee for production of a Will or other testamentary instrument, and such instrument is not found to be in his possession, a fee not exceeding 10s. 6d. in respect of the search consequent upon such application.

LOREBURN, C.

J. HERBERT LEWIS.

CECIL NORTON.

APPENDIX I.

PART F.

THE PUBLIC TRUSTEE ACT, 1906. THE PUBLIC TRUSTEE RULES, 1907.

REGULATIONS APPROVED BY THE TREASURY FOR THE GENERAL
CONDITIONS OF APPROVAL OF CORPORATE BODIES DESIRING TO
ACT AS CUSTODIAN TRUSTEES.

1. The corporate body shall satisfy the Public Trustee by production of the Act of Parliament, Charter, Deed of Settlement, Memorandum and Articles of Association, or other instrument constituting or defining the powers of the corporate body that it is a body of a class mentioned in Rule 36 (1) of the above Rules, and is legally capable (if approved) of acting as custodian trustee.

2. The corporate body shall by instrument under seal addressed to the Public Trustee undertake that (if approved) it will observe the following conditions, and from time to time (if required) satisfy the Public Trustee that the same have been and are being observed.

3. The corporate body shall keep a separate account for every trust of which it is custodian trustee, and such account shall show (a) the mode in which the capital of the trust is from time to time invested and all dealings with such capital; (b) the place of custody of the securities and documents of title relating to the trust property; and (c) the mode in which the income of the trust property is from time to time dealt with.

4. All moneys held by the corporate body as custodian trustee shall be placed to a separate account at a bank, and the corporate body shall notify such bank that all moneys for the time being

standing to that account are trust moneys and are incapable of being subject to any lien or claim in respect of any moneys which may from time to time be owing by the corporate body to such bank.

5. At the expiration of each financial year the corporate body shall deliver to the Public Trustee returns in the forms set out in the Schedules hereto, or in such other form as the Public Trustee may from time to time, with the approval of the Treasury, prescribe in lieu thereof, showing the particulars mentioned in any such forms as to the business transacted by the corporate body as custodian trustee during that year, and shall also transmit to the Public Trustee the published accounts of the corporate body for that year. In this condition, the term "financial year" means the period of twelve calendar months at the end of which the balance of the accounts of the corporate body is struck, or if no such balance is struck then the period of twelve calendar months ending with the 31st day of December.

6. Every such return shall be accompanied by a certificate signed by the chairman (or other principal officer), the secretary and the auditors of the corporate body stating that the securities and properties specified in the return are held by the corporate body in the capacity of custodian trustee only and are separate and distinct from any other securities and properties of the corporate body.

7. Every prospectus, circular, or other document issued by or on behalf of the corporate body and containing any reference to the approval of that body as custodian trustee shall also contain a separate and distinct statement that no liability attaches to the Consolidated Fund in respect of any act or omission of the corporate body.

NOTE.—These conditions are published only for the information of corporate bodies desiring to obtain the approval of the Public Trustee and the Treasury, and are not to be understood as preventing the Treasury from requiring any substituted or further conditions either generally or in any particular case.

THE PUBLIC TRUSTEE ACT, 1906.

SCHEDULES REFERRED TO IN CONDITION 5 OF THE GENERAL CONDITIONS OF APPROVAL OF CORPORATE BODIES DESIRING TO ACT AS CUSTODIAN TRUSTEES.

SCHEDULE I.

Trustee and Executor Department.

Revenue Account, so far as concerns Custodian Trusteeships only.

Date. 19		Date. 19	
	Amount of special fund (if any) at the beginning of the year set apart to meet the liabilities of the Company incurred in acting as Custodian Trustees - - -		Commission - - -
	Interest and Dividends (if any) thereon - - -		Expenses of Management - - -
	Fees payable for acting as Custodian Trustees - - -		Other Payments - - -
	Other receipts - - -		(Accounts to be specified.)
	(Accounts to be specified.)		Balance: how dealt with to be specified - - -
			Amount of Special Fund at the end of the year set apart to meet the liabilities of the Company incurred in acting as Custodian Trustees - - -
	£		£

SCHEDULE II.

Balance Sheet of the Trustee and Executor Department, so far as concerns Custodian Trusteeships only, on the 19 .

LIABILITIES.		ASSETS.	
Capital Value of the Estates of Trusts in operation in respect of which the Company is acting as Custodian Trustee - - -		Land, Freehold - £	
Fund (if any) set apart to meet the liabilities of the Company for acting as Custodian Trustee - - -		Leasehold - £	
Other Funds (if any) to be specified - - -		Copyhold - £	£
		House Property, Freehold - £	
		Leasehold - £	£
		Mortgages on property within the U. K. - £	
		Mortgages on property out of the U. K. - - - £	£
		Investments, at cost price -	
		British Govt. Securities - - £	
		Indian and Colonial Govt. Securities - £	
		Foreign Govt. Securities - - £	
		Rly. Deb. and Deb. Stocks - - - £	
		Rly. Shares Ord. and Pref. - - £	
		Shares on which there is a liability £	
		Bonds to Bearer - £	£
		Other Investments and Assets to be specified - - £	£
		Cash, on Deposit - £	
		Cash in hand and on Current Account - £	£
	£		£

**Form of Application by Corporate Body for Approval
as Custodian Trustee.**

To the PUBLIC TRUSTEE,
3 & 4 CLEMENT'S INN,
STRAND, W.C.

THE PUBLIC TRUSTEE ACT, 1906.

THE PUBLIC TRUSTEE RULES, 1907.

WE¹ ,
whose principal office is at² ,
desiring to become entitled to act as
custodian trustee under the above Act, hereby apply for the
approval of the Public Trustee and the Treasury under the
above Rules.

And we hereby undertake that if so approved we will observe
the conditions of such approval numbered 3, 4,³ 5, 6, and 7 in the
Regulations issued by the Treasury in the matter of the said
Act and Rules, dated March, 1908, and will from time to time
(if required) satisfy the Public Trustee that such conditions have
been and are being observed.

A copy of the⁴ by
which our powers are defined accompanies this application.

Dated this day of , 19 .

The Common Seal of the above-named)
was hereunto affixed in the presence of)

¹ Insert full name of corporate body.

² Insert full address.

³ If the applicant is a banking company Condition 4 may be struck out.

⁴ Insert title or description of Act or instrument.

**Form of Approval of a Body Corporate as Custodian
Trustee.**

THE PUBLIC TRUSTEE ACT, 1906.

THE PUBLIC TRUSTEE RULES, 1907.

Whereas the body corporate hereunder named has applied to me for approval of the said body as a body corporate entitled to act as a custodian trustee under the above-mentioned Act, and has by instrument under seal addressed to the Public Trustee undertaken that (if approved) it will observe the conditions hereinafter referred to, and will from time to time (if required) satisfy the Public Trustee that the same have been and are being observed

Now I, the undersigned, being the Public Trustee, with the concurrence of the Lords Commissioners of His Majesty's Treasury, in pursuance of the above-mentioned Act and Rules and of all other powers, do hereby approve the

as a body corporate entitled to act as
custodian trustee under the said Act, but subject to the conditions
numbered 3, 4, 5, 6, and 7 in the Regulations issued by the Treasury
in the matter of the said Act and Rules and dated March, 1908.

Dated this day of , 19

The Common Seal of the Public
Trustee was hereunto affixed }
in the presence of



Public Trustee.

Instructions to the Registrars of the Probate Division with regard to applications by the Public Trustee for Letters of Administration.

1. For grants of letters of administration.

- (a) When the Public Trustee applies for letters of administration, notice should be given by him to the widower, widow, heir-at-law, next-of-kin, and persons entitled in distribution or their representatives, as the case may be, or such of them as can, without delay, be communicated with, intimating that the application for a grant is being made by the Public Trustee and that unless application for a grant be made, or a caveat be entered, within eight days from the date of the posting of the notices he will proceed with his application without further notice, but if a person to whom notice is sent is not in the United Kingdom the period of eight days should be increased by the addition of time sufficient for a reply by return of post in ordinary course of postage from the place to which the notice is sent.
- (b) If any application for a grant in preference to the Public Trustee be made the question of preference may be dealt with by one of the Registrars, or on application to the Court.
- (c) If a caveat be entered, the usual practice is to be followed.
- (d) If it is suggested that there is a Will the Public Trustee must first cite the executors, and the persons interested thereunder to propound the same.

2. When the Public Trustee applies for letters of administration with Will, he must clear off executors in the usual way, and notice should be given as above-mentioned to the residuary legatees and devisees, or their representatives, as the case may be, or, if there are no residuary legatees and devisees, to the person or persons entitled to the undisposed of residue or their representatives.

3. In the wording of the grant, the Public Trustee should be described as "The Public Trustee."

4. If the Public Trustee take a grant as executor, he must be considered thereby to continue the chain of executorship.

J. GORELL BARNES, P.

27th March, 1908.

APPENDIX II.

FORMS FOR USE UNDER THE TRUSTEE ACT, 1893, AND THE JUDICIAL TRUSTEES ACT, 1896.

Form No. 1.

DEED OF APPOINTMENT OF NEW TRUSTEES. Variations for Cases where there are Persons nominated in the Deed creating the trust to appoint New Trustees, and where there are not.

See Section 10, Sub-section 1, of The Trustee Act, 1893.

This Indenture, made &c. between A. of &c. and B. of &c. [*persons nominated to appoint*] of the first part, C. of &c. [*new trustee*] of the second part, and D. of &c. and E. of &c. [*continuing trustees*] of the third part,¹ and supplemental to an Indenture dated &c., and made between &c. (hereinafter called "the principal Indenture"), being a settlement made previously to the marriage then intended, and since solemnised, between the said A. and B. of which principal indenture F. and the said D. and E. are trustees

[*Recite present state of investment of trust funds by reference to a Schedule.*]

[*Recite reason for retirement of outgoing trustee, or recite death of a trustee.*]

[*Recite intention to appoint new trustee.*]

[*Recite that trust funds are to be transferred.*]

¹ If there are no persons nominated by the deed or Will creating the trust, then the parties to the deed of appointment will be the appointors (under the Act) of the one part (usually the continuing trustees) and the new trustees of the other part.

Now this Indenture witnesseth that, in exercise of the power for this purpose by the principal Indenture [*or if no power is contained in the Settlement by the Statute in that behalf, or if the statutory power is expressly incorporated in the settlement by the joint operation of the principal Indenture and the Statute in that behalf*] given to the said A. and B. and of every or any other power in anywise enabling them in this behalf, they, the said A. and B., do hereby appoint the said [*new trustee*] to be a trustee of the principal Indenture in the place of the said [*deceased or retiring trustee*], and jointly with the said [*continuing trustees*], for the purposes of the principal Indenture or such of the same purposes as are still subsisting and capable of taking effect.

[*Declaration of trust.*¹]

In witness &c.

Form No. 2.

DEED OF APPOINTMENT OF NEW TRUSTEES, where a Separate Set of Trustees is appointed for a part of the Trust Property held on Trusts distinct from those relating to any other part.

See Section 10, Sub-section 2 (b), of The Trustee Act, 1893.

This Indenture, made &c. between A. [*retiring trustee and appointor*] of &c. of the one part and B. of &c. and C. [*new trustees*] of &c. of the other part

[*Recite Will of testator, whereby testator, after appointing A. and Z. executors and trustees, gave his residuary personal estate to A. and Z. upon trust to convert, and, after payment of debts, &c., to invest net moneys arising from conversion, and hold same in trust for his three daughters in equal shares, the share of each daughter to be held in trust for her and her children by way of settlement or otherwise, as case may be.*]

[*Recite death and probate.*]

[*Recite conversion of residuary personal estate, payment of debts, &c., and investment of residue of moneys arising from conversion.*]

¹ This is usual, though not necessary.

And whereas the several stocks, shares, and securities specified in the Schedule hereunder written represent the one-third share of the said residuary moneys set apart by the said A. and Z. to be held upon the trusts declared by the hereinbefore recited Will for the benefit of the said testator's daughter E. and her children :

[*Recite death of Z., and desire of A. to retire from the trust.*]

And whereas the said A. is desirous of appointing the said B. and C. to be trustees of the said one-third share of the said residuary moneys so held in trust for the said testator's said daughter E. and her children as aforesaid :

And whereas the said investments mentioned and specified in the said Schedule are intended to be forthwith transferred by the said A. into the joint names of the said B. and C..

Now this Indenture witnesseth that, in pursuance of his said desire, and in exercise of the power for this purpose by the Statute in that behalf given to the said A., and of every or any other power in anywise enabling him in this behalf, he, the said A., doth hereby appoint the said B. and C. to be trustees of the hereinbefore recited Will of the said testator in the place or stead of the said Z. deceased and of him the said A., so far as regards the one-third share of the said residuary trust moneys of the said testator bequeathed by the said Will for the benefit of the said testator's said daughter E. and her children as in the said Will mentioned

And it is hereby agreed and declared that the said B. and C., their executors, administrators, and assigns, shall stand possessed of the said stocks, shares, and securities specified in the said Schedule, when the same shall have been transferred into the names of the said B. and C., upon the trusts and subject to the powers and provisions applicable thereto under or by virtue of the hereinbefore recited Will, or such of them as may be subsisting and capable of taking effect.

In witness &c.

SCHEDULE.

[*Particulars of trust investments.*]

Form No. 3.

RECITAL OF DESIRE BY A TRUSTEE TO BE DISCHARGED, with Vesting Declaration vesting Land, Chattels, and the Right to Recover Debts and Things in Action in Continuing Trustees alone.

[See Section 11 and Section 12, Sub-section 2, of The Trustee Act, 1893.]

Parties—Retiring trustee, 1; Continuing trustees, 2; Appointors, 3.

[*Introductory Recitals.*]

Recital of Desire to be Discharged.

And whereas the said [*retiring trustee*] is desirous of being discharged from the trusts of the said Will [*or Indenture, as the case may be*]:

Now this Indenture witnesseth that [*retiring trustee*] hereby declares that he is desirous of being discharged from the trusts of the said Will [*or Indenture, &c.*].

Consent to Discharge.

And this Indenture further witnesseth that the said [*appointors being the persons (if any) empowered to appoint trustees and the continuing trustees*] hereby consent to the discharge of the said [*retiring trustee*] from the trusts aforesaid, and to the vesting in [*continuing trustees*] alone of the trust property.

Vesting Declaration of Land.

And this Indenture also witnesseth that the said [*retiring and continuing trustees and the appointor or appointors (if any)*] do [*or doth, as the case may be*] hereby declare that all the estate and interest of the said [*retiring and continuing trustees*], and each of them, in the [*land*] and hereditaments now subject to the trusts of the said Will [*or Indenture dated &c., as the case may be*] shall forthwith vest in the said [*continuing trustees*] alone, as joint tenants for the purposes and upon the trusts thereof.

Vesting Declaration of Chattels and Choses in Action.

And this Indenture also witnesseth that the said [*retiring and continuing trustees and the appointor or appointors (if any)*] doth [*or do as the case may be*] hereby declare that all chattels, and also the right of the said [*retiring and continuing trustees*] to recover and receive all debts and things in action, subject to the trusts of the said Will [*or Indenture dated &c.*], shall forthwith vest in the said [*continuing trustees*] alone as trustees of the said Will [*or Indenture dated &c.*], and as joint tenants for the purposes and upon the trusts thereof.

Form No. 4.

VESTING DECLARATION in Deed of Appointment of New Trustees, vesting Land, Chattels, and the Right to Recover Choses in Action the subject of the Trust.

[See Section 12, Sub-section 1, of The Trustee Act, 1893.]

And this Indenture further witnesseth that the said [*appointor*] hereby declares that all and singular the hereditaments, reversionary interests, policies, choses in action, chattels, effects, and property specified in the Schedule hereto, and the right to receive and recover all such choses in action and all other (if any) hereditaments, chattels, and property, whether real or personal (including choses in action and the right to receive and recover the same), which are now subject to the trusts of the said [*Indenture of Settlement*], and are capable of being vested by this declaration, shall vest in the said [*continuing and new trustees*] for all the estate and interest now subject to the trusts of the said [*Indenture of Settlement*] upon the trusts and subject to the powers and provisions applicable thereto respectively by virtue of the said [*Indenture of Settlement*] or otherwise.

SCHEDULE.

[*Particulars of property.*]

Form No. 5.SUMMONS FOR VESTING COPYHOLDS IN NEW TRUSTEES.¹

[See Section 12, Sub-section 3, and Section 34 of The Trustee Act, 1893.]

IN THE HIGH COURT OF JUSTICE, [Letter and Number.]
CHANCERY DIVISION.

Mr. JUSTICE

In the Matter of the Trusts of the Will of A. B.
and

In the Matter of The Trustee Act, 1893.

Let _____, of _____, in the county of _____, within eight days after service of this summons on him, exclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued upon the application of _____, of _____, in the county of _____, for an Order that—

- I. The copyhold messuages or tenements known as _____, devised by the Will of the said [testator] to the said [old trustees], or other the copyhold messuages or tenements now subject to the trusts of the said Will of the said [testator], may vest in the said [new trustees] as joint tenants as trustees of the said Will, and upon the trusts therein declared concerning the same, for such estate and interest as the said [old trustees], if living, would have, or as [_____] the customary heir at law of the said [last surviving trustee] deceased, now has therein;
2. That the costs of this application may be properly provided for;

Or that such other Order may be made in the premises as to this Honourable Court shall seem meet.

Dated the _____

To _____

NOTE.—The Order to be made on this summons is sought under Sections 26 and 34 of The Trustee Act, 1893.

¹ Sometimes the appointment of new trustees is required to be made by the Court as well as a Vesting Order. In that event the summons would ask:—"That _____ may be appointed trustees of the said [Will] in the place of _____ and _____ respectively deceased."

This summons was taken out by _____, of _____, solicitor for the above-named _____.

The Respondent may appear hereto by entering appearance, either personally or by solicitor, at the Central Office, Royal Courts of Justice, London.

NOTE.—If the Respondent does not enter appearance within the time and at the place above mentioned, such Order will be made and proceedings taken as the Judge may think just and expedient.

Form No. 6.

AFFIDAVIT IN SUPPORT OF SUMMONS FOR VESTING COPYHOLDS IN NEW TRUSTEES.

[See Section 12, Sub-section 3, and Section 34 of The Trustee Act, 1893.]

IN THE HIGH COURT OF JUSTICE, [Reference to Record.]
CHANCERY DIVISION.

Mr. JUSTICE

[Formal parts.]

I, A. B., of &c., make oath and say—

1. [State Will of testatrix, devising copyholds to trustees.]
2. [Death of testatrix and probate of Will.]
3. [Death of trustee.]
4. [Death of surviving trustee and grant of letters of administration and any other necessary facts.]

5. The said E. F. [last surviving trustee] left him surviving as his customary heir according to the custom of the manor of _____, wherein the said copyhold estate of the testatrix is situate, and which was vested in the said [trustees] as trustees of the said Will, his nephew [or as the case may be] F. G.

6. The said copyhold estate of the testatrix, subject to the trusts of the said Will herein set forth, now consists of [state particulars], and this deponent is advised and submits

that the said copyhold estate upon the decease of the said [trustee] intestate as aforesaid became and now is vested in the said F. G. as such customary heir upon the trusts of the said Will.

7. The said F. G. has for some time past been and is now resident out of the jurisdiction of this Honourable Court, and is of unsound mind not so found, and has for some time past been and is now confined in the [asylum].¹

8. [State appointment by deed of new trustees of the Will and the vesting in them of freeholds.]

9. Under the circumstances hereinbefore set forth, it is necessary and expedient that a Vesting Order should be made by this Honourable Court vesting in the said [new trustees] as such trustees the said copyhold hereditaments for such estate and interest as the said [original trustees], if living, would have, or as the said F. G., the customary heir of the said [last surviving trustee], now has therein.²

Form No. 7.

ORDER FOR APPOINTMENT OF NEW TRUSTEES, AND VESTING COPYHOLDS.

[Formal parts of Order.]

Upon the application by [originating summons dated the day of], of , and upon hearing the solicitors for the applicant and for the respondent , and upon reading an affidavit filed &c., an affidavit of filed &c., whereby it appears that the lord of the manor of consents to the Vesting Order hereinbefore mentioned, the consent &c.

The Judge doth hereby appoint and trustees of the Will of , dated the day of , 19 , in the place of and , both deceased, the trustees appointed by the said Will.

¹ This allegation obviates service on F. G. (see *re East*, 8 Ch. 735, and *re Green*, 10 Ch. 272).

² There should also be an affidavit by the steward of the manor that, according to the custom of the manor, F. G. is the heir of the last surviving trustee.

And it is ordered that the said copyhold or customaryhold hereditaments do vest in the said and as such trustees of the said for all the estate and interest in the same which and had, or which the said , if living, would have had therein, or as (the heir of the said), who has absconded, or other the customary heir at law has therein.

Form No. 8.

ORIGINATING SUMMONS FOR APPOINTMENT OF TRUSTEE, AND VESTING ORDER.¹

IN THE HIGH COURT OF JUSTICE, [*Reference to Record.*]
 CHANCERY DIVISION.

Mr. JUSTICE

In the Matter of the Trusts of an Indenture of Settlement dated &c., made between &c. [*or the Will of A. B. dated &c.*]

and

In the Matter of the Trustee Act, 1893.

Let , of [*state character in which respondent is made a party*], within eight days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued upon the application of E. F., of , in the county of [*being respectively trustees or beneficiaries under the said Will or Settlement*], for an Order—

1. That G. H. of , in the county of , and I. J., of , in the county of , may be appointed trustees of the said Will [*or Indenture of Settlement*] in the place of [*old trustee*] and [*old trustee*] respectively deceased [*or as the case may be*] [*or jointly with the continuing trustee of the said Will*].

¹ If proceedings are already pending an ordinary summons in the action would be the proper mode; while, if there are no respondents, an *ex parte* summons would be adopted.

2. That the messuages, tenements, lands, and hereditaments situate at [place], now subject to the trusts of the said Will [or Indenture of Settlement], and all other (if any) the lands and hereditaments so subject, may vest in the said G. H. and I. J. [or jointly with the said] as such trustees as aforesaid for the estate and interest therein now vested in the said [or, if it is not known in whom the legal estate has become vested, for the estate therein which would now be vested in, name the last person or persons in whom the trust estate is known to have been vested], if now living, such messuages, lands, and hereditaments to be held by the said G. H. and I. J. upon the trusts of the said Will &c.

3. That the right to call for a transfer of and to transfer into their own names the sum of , respectively standing in the names of , in [state what books of the bank &c.] subject to the trusts of the said Will [or Settlement], and to receive the dividends now due and to accrue due thereon, may vest in the said G. H. and I. J. as such trustees as aforesaid.

4. That the right to sue for and recover the sum of £ , secured by [state particulars of security] and any other chose in action subject to the trusts of the said Will [or Settlement], or any interest in respect thereof, may vest in the said G. H. and I. J. as such trustees as aforesaid.

5. That the costs of this application may be provided for.¹

NOTE.—This application is made under Sections of The Trustee Act, 1893.

Dated &c.

To²

This summons was taken out by , of , solicitor for the above-named .

The respondent may appear hereto by entering appearance, either personally or by solicitor, at the Central Office, Royal Courts of Justice, London.

NOTE.—If the Respondent does not enter appearance within the time and at the place above mentioned, such Order will be made and proceedings taken as the Judge may think just and expedient.

¹ More specific directions may be sought: as by asking for the costs to be raised out of the trust estate, or the income, and for taxation.

² For a statement of the practice as to service of such a summons see *per* Kekewich, J. [1901], W. N. 85 (Memorandum as to Practices).

Form No. 9.AFFIDAVIT IN SUPPORT OF SUMMONS FOR APPOINTMENT OF NEW
TRUSTEES AND VESTING ORDER.

1. [*State creation of the trust.*]
2. [*State the funds or other property now the subject of the trust.*]
3. [*Prove strictly death of trustee by exhibiting certificate of death or burial.*]
4. [*Prove who are the beneficiaries.*]
5. [*State the reason for the application, and that "it is inexpedient, difficult, or impracticable to appoint a new trustee or new trustees without the assistance of the Court."*]
6. [*Show means of knowledge.*]

Form No. 10.CONSENT OF NEW TRUSTEES TO ACT, AND VERIFICATION OF
SIGNATURES.[*Title and Reference to Record.*]

We, _____ and _____, do hereby consent to act as trustees under the [*state nature of document creating the trust*].

Dated, &c.

(Signed)

I _____, of _____, in the County of _____, Solicitor, hereby certify that the above-written signatures are the signatures of _____ and _____ the persons mentioned in the above-written Consent.

(Signed)

Solicitor for the [*state whom*].¹¹ An affidavit may be substituted for this verification, but is not usual.

Form No. 11.**AFFIDAVIT OF FITNESS OF PROPOSED TRUSTEES.¹**

Filed _____ [Title and Reference to Record.]

I, _____, of _____, make oath and say as follows:—

1. I have for _____ years last past known and been well acquainted with _____, of _____, and _____, of _____, the persons proposed to be appointed new trustees of the Will of _____, late of _____, deceased, the testator in the summons in the above matter mentioned.

2. The said _____ has for _____ years last past carried on business as a _____ at _____, in the city [or county] of _____. The said _____ has for _____ years past carried on business as a _____ at _____, in the city [or county] of _____.

3. During my acquaintance with them I have had many opportunities of forming an opinion as to their habits of business and integrity. The said _____ and _____ respectively are persons in good credit in the neighbourhood in which they respectively carry on business as aforesaid, and are both men of business habits and of strict honour and integrity.

4. In my judgment and opinion the said _____ and _____ are fit, proper, and eligible persons to be appointed new trustees of the said Will.

Sworn &c.

This Affidavit is filed &c.

¹ One affidavit seems sufficient (see *re* Arden, 1887, W. N. 166). As to contents of such an affidavit see *re* Castle Sterry's Trust (1888, W. N. 179).

Form No. 12.

AFFIDAVIT BY TRUSTEE ON PAYMENT INTO COURT OF MONEY OR
SECURITIES BELONGING TO A TRUST, WITH LODGMENT SCHEDULE.¹

[See Section 42 of The Trustee Act, 1893.]

IN THE HIGH COURT OF JUSTICE,

CHANCERY DIVISION.

In the Matter of the Trusts of a Sum of £
bequeathed &c.

and

In the Matter of The Trustee Act, 1893.

I, A. B., of _____, make oath and say as follows:—

1. The office of _____, situate at _____, in the county of _____², is the place where I am to be served with any petition, summons, or order, or with notice of any proceeding relating to the trust fund hereinafter mentioned.

2. Under the provisions of the above-mentioned Act, I propose to pay and transfer into Court the funds mentioned in the Schedule hereto to the credit in the said Schedule mentioned.

3. [*State Will or other document, &c., under which the trust arose.*]

4. The said [*testatrix*] died on the _____ day of _____ without having altered or revoked her said Will, and the same was duly proved on the _____ day of _____ by _____ in the Principal Registry of Her Majesty's Court of Probate.

¹ See Rules of The Supreme Court (Trustee Act), 1893, Order L1Vb., Rule 4, Sub-rule 1, and Supreme Court Funds Rules, 1905, Rule 41. The Schedule alone has to be printed; the affidavit need not.

² If it is desired to deal with the fund, service should be made on the trustee at his address if known (*re* Lawrence's Trusts, 14 W. R. 93).

5. On the death of the said testatrix I and the said [] possessed ourselves of her personal estate and effects, and thereout paid her just debts and funeral and testamentary expenses, and also paid and satisfied the said legacies bequeathed by the said Will, other than the said legacy of £ so bequeathed to the said as aforesaid, and on the day of we appropriated and set apart out of the assets of the said testatrix the sum of £ to answer the said [legacy] to the said , and invested such sum in the purchase in our joint names of the sum of £ New Consols.

6. [State decease or otherwise of other trustees and the facts rendering necessary the payment in.]

7. I have received the sum of £ for the dividend which accrued due on the said sum of £ New Consols on the day of , and, after deducting and retaining thereout the sum of £ for the costs of paying and transferring the said trust fund into Court, there remains the sum of £ cash, and which sums of £ New Consols and £ cash I propose to transfer and pay into Court as in the said Schedule hereto stated.

8. To the best of my knowledge and belief, the only persons interested in or entitled to the said sums of £ New Consols and £ cash are ¹

9. I submit to answer all such inquiries relating to the application of the said sums of £ New Consols and £ cash as this Court, or any Judge thereof at Chambers, may think proper to make or direct.

Sworn &c.

¹ It is necessary to state these particulars. See Order LIVb., Rule 4, Sub-rule 1 (b) of the Rules of The Supreme Court (Trustee Act), 1893, *ante*, p. 338.

LODGMET SCHEDULE.¹

IN THE HIGH COURT OF JUSTICE,

CHANCERY DIVISION.

Date of Order , 19

Filed , 19

Title of Cause or Matter 19 A. No. .

Ledger credit. { In the Matter of the Trusts of the sum of £
 bequeathed by the Will of in favour
 of (subject to duty).²

Particulars of Funds to be Lodged.	Name and Address of Person to make Lodgment.	Amounts.	
		Money.	Securities.
[Consols] Cash.	A. B. of in the county of The same.		

³No part of the legacy or succession or estate duty has been paid [or all the legacy or succession or estate duty has been paid]. It is desired that the above sum of cash, and the dividends to accrue on the above sum of Consols, may be invested in New Consols and accumulated [or It is deemed unnecessary to invest the above sum of cash and the dividends in the above Consols].

¹ See Supreme Court Funds Rules, 1905, Rule 41, and also Rules 5 to 10.² No heading should have more than thirty-six words (see Supreme Court Funds Rules, 1905, Rule 103, *ante*, p. 398).³ If no duty is payable on the funds to be paid in, it should be so stated.

Form No. 15.NOTICE TO PERSONS INTERESTED OF PAYMENT INTO COURT.¹

[See Section 42 of The Trustee Act, 1893.]

[*Title as in Form No. 12.*]

Take notice that on the day of , 19 , A. B., of , the trustee of [*Will of &c.*], under the circumstances set forth in the affidavit of the said A. B., filed in this matter on the day of , 19 , transferred into Court the sum of £ New Consols, and paid into Court the sum of £ cash to the credit of in accordance with the provisions of the above-mentioned Act of Parliament.

And also take Notice that you are named in the said affidavit as the person [*or one of the persons*] entitled to or interested in the said sums of New Consols and cash.

Dated this day of , 19 .

C. D.

Solicitor for the

To

Form No. 16.

REQUEST FOR LODGMENT BY A LEGAL PERSONAL REPRESENTATIVE
WITHOUT AFFIDAVIT OF A FUND BELONGING TO AN INFANT
LEGATEE.

See, for this form and forms incidental thereto, Form No. 16 in Appendix to Supreme Court Funds Rules, 1905, *ante*, p. 422.

¹ See Rules of The Supreme Court (Trustee Act), 1893, Order LIVB., Rule 4, Sub-rule 2 (a). The notice is sent by prepaid letter.

Form No. 17.

PETITION FOR TRANSFER AND PAYMENT OUT OF A FUND LODGED IN
COURT ON AFFIDAVIT.

IN THE HIGH COURT OF JUSTICE,
CHANCERY DIVISION.

MR. JUSTICE

[Title as in the Trustee's Affidavit on Payment in.]

To His Majesty's High Court of Justice.

The Humble Petition of

Showeth as follows:—

1. The trust fund to which this Petition relates was paid and transferred into Court to the credit of the above-mentioned matter on the affidavit of _____, filed therein on the day of _____.

2. *[Set out shortly material parts of the affidavit upon which payment in was made showing the creation of the trust, the nature of the funds, the interests of the beneficiaries, and the reason for paying in.]*

3. *[The present state of the funds.]* The said sum of _____ and the dividends and accumulation of dividends thereon are now represented by _____

4. *[State title of Petitioner.]*

5. The office of your Petitioner's solicitor, Mr. _____, situate at _____, in the (county) of _____, is the place where your Petitioner may be served with any Petition or summons, or notice of any proceeding or Order of this Court relating to the said trust fund.

6. The said trust fund is liable to legacy [or succession or estate] duty. No part of such duty has been paid.

Your Petitioner therefore humbly prays, as follows:—

1. That the costs of your Petitioner of this application may be taxed by the Taxing Master as between solicitor and client.

2. That so much of the £ Consols as with the £ cash, and any dividends to accrue on the said Consols, will be sufficient to raise the said costs when taxed, and also the assessed amount of the legacy [or succession, or estate] duty payable in respect of the said trust fund, may be sold.

3. That out of the money to arise by such sale, the said costs may be paid; and the amount of the said duty may, upon the requisition of the Commissioners of Inland Revenue, be transferred to the account of the Receiver-General of Inland Revenue, at the Bank.

4. That the residue of the said Consols may be transferred to your Petitioner.

Or that such other Order may be made in the premises as to this Honourable Court shall seem meet.

And your petitioner will ever pray, &c.

Form No. 18.

SUMMONS FOR TRANSFER AND PAYMENT OUT OF FUND LODGED IN
COURT IN CASES WHERE PETITION IS NOT APPLICABLE.

IN THE HIGH COURT OF JUSTICE,

CHANCERY DIVISION.

Mr. JUSTICE

19

No.

[*Title as in Trustee's Affidavit.*]

Let , of , in the county of , the of the said deceased, within eight days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued upon the application of , of &c.,

who claims to be _____ in the affidavit of _____, filed
in this matter the _____ day of _____ named.

1. That [see *Prayer of Petition, substituting Applicant for
Petitioner.*]

The office of the Applicant's solicitor, Mr _____, situate
at _____, in the county of _____, is the place where
the Applicant may be served with any Petition or summons,
or notice of any proceeding or Order of the Court, relating to
the said trust fund.¹

Dated &c.

Form No. 19.

APPLICATION FOR ENQUIRY AND PAYMENT OUT OF COURT OF A FUND
PAID IN BY TRUSTEES.

[See Section 42 of The Trustee Act, 1893.]

IN THE HIGH COURT OF JUSTICE,
CHANCERY DIVISION.

Mr. JUSTICE _____ 19 . No.

In the Matter of a Trust of a sum of £ _____ New Consols
(formerly New £3 per Cent. Annuities) bequeathed
by the Will of _____ deceased, dated the _____ day
of _____, upon trust for _____ for life,
with remainder to the children of
_____ and

In the Matter of The Trustee Act, 1893.

Let _____, of &c.; _____, of &c., wife of _____; and
_____, of &c., and _____, of &c., the trustees of the settlement
dated the _____ day of _____ 19 _____, being the settlement made
on the marriage of _____ and _____; and _____,
of &c., the trustee of the said fund, within eight days after
service of this summons on them respectively, inclusive of the
day of such service, cause an appearance to be entered for them
to this summons, which is issued upon the application of _____,
of &c., as assignee of the shares of certain beneficiaries in the said

¹ See Rules of The Supreme Court (Trustee Act), 1893, Order LIVB., Rule 4, Sub-rule 2 (b).

fund for the determination of the following questions arising with reference to the said fund, and for such Order as hereinafter mentioned:—

1. What persons are, in the events which have happened, now entitled to the said fund in Court and in what shares.

2. That such Order may be made as to payment out to such person or persons, or transfer to such separate accounts as the Court may think fit, of the whole or any part or parts of the said fund.

3. An Order as to how the costs of and incident to this application are to be borne.

Dated &c.

This summons was taken out by _____, of &c., the solicitor for the above-named Applicant.

The Defendants may appear hereto by entering appearances, either personally or by solicitor, at the Central Office, Royal Courts of Justice, London.

NOTE.—If the Defendants do not enter appearances within the time and at the place above mentioned, such Order will be made and proceedings taken as the Judge may think just and expedient.

Form No. 20.

SUMMONS FOR TRANSFER AND PAYMENT OUT TO LEGATEE OF FUND
LODGED WITHOUT AN AFFIDAVIT.

IN THE HIGH COURT OF JUSTICE,
CHANCERY DIVISION.

Mr. JUSTICE

19

No.

In the Matter of _____, an Infant [*or*
absent beyond the seas]
and

In the Matter of The Trustee Act, 1893.

Let all parties concerned attend at the Chambers of the Judge,
Room No. _____, Royal Courts of Justice, Strand, London, at the

time specified in the margin hereof, on the hearing of an application on the part of _____, of _____, late an infant, but now of age, that the sum of £ _____ Consols and £ _____ cash in Court to the credit of _____, may be respectively transferred and paid to the Applicant.

[*This will be accompanied by a Payment Schedule.*]

Form No. 21.

FORM OF PETITION BY TRUSTEES FOR THE SANCTION OF THE COURT TO A DISPOSITION OF LAND AND MINERALS SEPARATELY, OR RESERVING THE MINERALS.

[See Section 44 of The Trustee Act, 1893.]

IN THE HIGH COURT OF JUSTICE,

CHANCERY DIVISION.

Mr. JUSTICE

In the Matter of the Trusts of an Indenture of Settlement dated &c.

or

In the Matter of the Trusts of the Settlement made on the marriage of _____ and _____ his wife [*or of the Will of A., deceased, or as the case may be*]

and

In the Matter of The Trustee Act, 1893.

To His Majesty's High Court of Justice.

The Humble Petition of A. B., of &c., and C. D., of &c.

Showeth as follows:—

1. [*State the Settlement or other instrument referred to in the title, showing that the Petitioners have authority to dispose of the land,*

Form No. 22.

NOTICE under Order XVI., Rules 48 and 55, of the Rules of the Supreme Court, and Section 45 of The Trustee Act, 1893, by a Trustee Defendant for Contribution from, or Indemnity by, a Beneficiary who has Instigated or Consented to a Breach of Trust.¹

IN THE HIGH COURT OF JUSTICE, [Reference to Record.]

CHANCERY DIVISION.

Mr. JUSTICE

Between A. B.

Plaintiff,

and

C. D. and

E. F.

Defendants.

Notice filed 19 .

To the Defendant C. D. [or X. Y., if not a party to the Action].

[If addressed to a person not party to the Action, Take Notice that this Action has been brought by the Plaintiff against the Defendants as Trustees under &c. for breach of trust, as the case may be].

The Defendant E. F. claims to be entitled to contribution from you to the extent of [state proportion of claim] of any sum which the Plaintiff may recover against him on the ground that you are &c. [or indemnified by you against the claim for the said breach of trust and costs on the ground that you are a beneficiary under the said &c., and that the investment was made at your instigation (or with your consent in writing)].

And take notice that if you wish to dispute the Plaintiff's claim in this Action as against the Defendants , or your liability to the Defendants , you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing you will be deemed to admit the validity of any judgment obtained against the Defendants , and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you pursuant to the Rules of the Supreme Court, 1883, Order XVI., Part VI.

(Signed)

or,

Solicitor for

Appearance to be entered at

¹ See remarks on this procedure in *re Holt*, *re Rollason*, *Holt v. Holt* ([1897] 2 Ch. 525), and *ante*, p. 232.

Form No. 23.

APPOINTMENT BY DEED OF A NEW TRUSTEE UNDER SETTLED
LAND ACTS.

[See Section 47 of The Trustee Act, 1893.]

This Indenture made &c. between A., of &c. [*surviving trustee*], of the one part, and B., of &c. [*new trustee*], of the other part.

[*Recite Will showing shortly the devise by way of settlement, and stating that the Will contained no power of or trust for sale within the purview of the Settled Land Acts.*]

And whereas by an Order of the Chancery Division of the High Court of Justice, made &c. by the Hon. Mr. Justice _____, in the matter of the houses, lands, tenements, hereditaments, and premises situate in or near _____, and other the real estate whatsoever and wheresoever settled by the Will of _____, of _____, and in the matter of The Settled Land Act, 1882, the said A. and X. were appointed trustees under the said settlement for the purposes of the above-mentioned Act:

And whereas the said X. died on the _____ day of _____:

And whereas the said A. is desirous of appointing the said B. to be a trustee under the said settlement in the place of X.:

Now this Indenture witnesseth that, in pursuance of the said desire, he, the said A., in the exercise of power in this behalf conferred upon him by The Trustee Act, 1893, and of every or any other power enabling him in this behalf, doth hereby appoint the said B. to be a trustee of the said settlement created by the said Will of the said _____ deceased in the place of the said X., and jointly with him the said A. for the purposes of The Settled Land Acts, 1882 to 1890.

In witness &c.

Form No 24.

GENERAL FORM OF ORIGINATING SUMMONS. Order LIV., Rule 4 (b).

[This Form should be used in applications under Rule 3 of Order LV.
of the Rules of the Supreme Court.]

IN THE HIGH COURT OF JUSTICE, [Reference to Record.]

CHANCERY DIVISION.

Mr. JUSTICE

1

Between A. B.

Plaintiff

and

C. D.

Defendant.

Let , of , in the county of , within eight days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued upon the application of , of , in the county of , who claims to be [*state the nature of the claim*], for the determination of the following questions:—[*State the questions.*]

Dated the

This summons was taken out by , of , solicitor for the above named .

The Defendant may appear hereto by entering appearance, either personally or by solicitor, at the Central Office, Royal Courts of Justice, London.

NOTE.—If the Defendant does not enter appearance within the time and at the place above mentioned, such Order will be made and proceedings taken as the Judge may think just and expedient.

¹ If the question to be determined arises in the administration of an estate or a trust, entitle it also in the matter of the estate or trust, thus:—"In the matter of the Estate of " or "In the matter of the Trusts of an Indenture &c."

Form No. 25.

ORIGINATING SUMMONS NOT INTER PARTIES.

IN THE HIGH COURT OF JUSTICE, 19 . No.
 CHANCERY DIVISION.

Mr. JUSTICE

In the Matter of the Trusts of the Will of A. B. [*or as the
 case may be*]

and

In the Matter of The Trustee Act, 1893.

Let all parties concerned attend at the Chambers of the
 Judge, Room No. , Royal Courts of Justice, Strand, London,
 at the time specified in the margin hereof, on the hearing of
 an application on the part of ,
 in the County of , for an Order that [*state the
 object of the application*].¹

Dated the

To

This summons was taken out by , of ,
 solicitor for the above-named .

The Respondent may appear hereto by entering appearance, either
 personally or by solicitor, at the Central Office, Royal Courts of
 Justice, London.

NOTE.—If the Respondent does not enter appearance within the time and at
 the place above mentioned, such Order will be made and proceedings taken as
 the Judge may think just and expedient.

¹ The section or sections of the Act under which the application is made should be
 stated.

Form No. 26.

NOTICE OF APPOINTMENT TO HEAR ORIGINATING SUMMONS.

Order LIV., Rule 4 (d).

[Title &c. as in Form No. 24 or 25 as the case may be].

To [insert the name of the Defendant or Respondent].

Take Notice that you are required to attend at the Chambers of the Judge, Room No. , Royal Courts of Justice, Strand, London, on the day of 19 , at o'clock in the noon, for the hearing of the originating summons issued herein on the day of 19 ; and that if you do not attend in person or by solicitor at the time and place mentioned, such Order will be made and proceedings taken as the Judge may think just and expedient.

(Signed)

Solicitor for the Plaintiff [or Applicant].

The Defendant may appear hereto by entering appearance, either personally or by solicitor, at the Central Office, Royal Courts of Justice, London.

NOTE.—If the Defendant does not enter appearance within the time and at the place above mentioned, such Order will be made and proceedings taken as the Judge may think just and expedient. .

Form No. 27.APPLICATION FOR THE APPOINTMENT, UNDER THE JUDICIAL TRUSTEES ACT, 1896, OF A JUDICIAL TRUSTEE OF A TRUST FUND.¹IN THE HIGH COURT OF JUSTICE, 19 . No. .
CHANCERY DIVISION.

Mr. JUSTICE

In the Matter of the Trusts of [or about to be
created by (state by whom or manner of creation of trust)]
and

In the Matter of The Judicial Trustees Act, 1896.

Let , of , in the county of , within
eight days after service of this summons on him, inclusive of the

¹ If there is a pending action the summons will not be an originating one, but one in the pending proceeding.

day of such service, cause an appearance to be entered for him to this summons, which is issued upon the application of _____, of _____, in the county of _____, for—

1. That _____, of _____, may be appointed a judicial trustee of the trust funds now subject to the said trust jointly with [*the present trustees, or otherwise as the case may be*].

2. That the messuages, tenements, lands, and hereditaments situate in [*place (now subject to the trusts of the said _____)*], and all other (if any) the lands and hereditaments so subject, may vest in the said [*judicial trustee*] and _____, as trustees thereof for the estate and interest now vested in

3. That the right to call for a transfer of, and to transfer into their own names, the sum of _____, subject to the trusts of the said _____, and to receive the dividends now due and to accrue due thereon, may be vested in the said _____ and _____, as the trustees thereof.

4. That the right to any chattels or debts or other things in action, subject to the trusts of the said _____, may be vested in the said _____ and _____, as the trustees thereof.

5. That such directions may be given with reference to security by the said trustees and otherwise as the Court thinks fit.

6. That the costs of this application may be provided for.

Dated the

To

This summons was taken out by _____, of _____, solicitor for the above-named

The Respondent may appear hereto by entering appearance, either personally or by solicitor, at the Central Office, Royal Courts of Justice, London.¹

NOTE.—If the Respondent does not enter appearance within the time and at the place above mentioned, such Order will be made and proceedings taken as the Judge may think just and expedient.

¹ If the application is made by or on behalf of a person creating or intending to create a trust, the summons, subject to any direction of the Court, need not be served on any person (Rule 3, Sub-rule 2). See generally as to service Rule 3, *ante*, p. 427.

Form No. 28.

STATEMENT IN SUPPORT OF APPLICATION FOR APPOINTMENT OF A JUDICIAL TRUSTEE.

[For heading see Form 27, *ante*.]

1. By Will [Indenture of Settlement &c. (*set out date, parties, and short particulars of trust, and who are the beneficiaries*)].

2. It is proposed that _____, of _____, shall be appointed a judicial trustee of the trust created as aforesaid [*state here short particulars of the reasons which lead to his appointment : e.g. It has been found impossible to obtain the consent of any person to act as a trustee. It is necessary that a person acquainted with the letting of farms be appointed to superintend the management of the property*].

3. It is proposed that the judicial trustee so to be appointed should be remunerated by payment to him of a commission not exceeding _____ on the gross income of the trust estate.

4. The trust fund consists of [*state nature of fund*]. The gross income of the trust fund at present amounts to approximately the sum of £ _____ and the expenses to a sum of £ _____ annually. The capital value of the trust estate amounts approximately to the sum of £ _____.

5. The incumbrances affecting the trust estate are set forth in the following schedule :—

PROPERTY CHARGED.	AMOUNT OF INCUMBRANCE.	HOW SECURED.

If the applicant cannot gain the information necessary for making the required statement on any point he must mention the fact in his statement (Rule 4, Sub-rule 3).

6. It is [*or is not*] proposed that the judicial trustee should act alone. [The present trustee, _____, of _____, will act jointly with him.]

7. The deeds and documents, certificates of shares, and debentures relating to the trust estate are in the possession of _____

8. The beneficiaries of the trust estate and their respective interests therein are as follows:—

9. [*State any special circumstances specially affecting the administration of the trust. See Rule 4, Sub-rule 1 (i), and Rule 26, Sub-rule 2, of the Judicial Trustee Rules, 1897*]

Form No. 29.

AFFIDAVIT VERIFYING STATEMENT IN SUPPORT OF APPLICATION FOR APPOINTMENT OF A JUDICIAL TRUSTEE.

[For heading see Form 27, *ante.*]

I _____, of _____, make oath and say as follows:—

I have read the statement marked _____, now produced and shown to me, and I say that the statements therein contained are to the best of my knowledge, information, and belief true.

Sworn &c.

Form No. 30.

SUMMONS FOR THE REMOVAL OF A JUDICIAL TRUSTEE.

IN THE HIGH COURT OF JUSTICE, 19 . No. .

CHANCERY DIVISION.

Mr. JUSTICE

In the Matter of the Trusts of

and

In the Matter of The Judicial Trustees Act, 1896.

Let [A. B. &c.]¹

1. That , the judicial trustee of the trust funds and property, may be removed from being such trustee.

2. That may be appointed judicial trustee in his place.

3. That such vesting or other Orders may be made herein as may be necessary for effectually vesting the trust estate in and

4. That the costs of this application may be provided for.

Dated &c.

To

This summons was taken out by &c.

The Respondent may appear hereto &c.

¹ The Court can give directions as to what person or persons shall be served (Judicial Trustees Rules, 1897, Rule 20, Sub-rule 2). For formal introduction see Form 27, *ante*.

Form No. 32.

SUMMONS BY AN EXECUTOR UNDER SECTION 6, SUB-SECTION (2), OF THE PUBLIC TRUSTEE ACT, 1906, FOR THE SANCTION OF THE COURT TO TRANSFER OF THE TESTATOR'S ESTATE TO THE PUBLIC TRUSTEE.

IN THE HIGH COURT OF JUSTICE, 19 A. No. .
 CHANCERY DIVISION.

MR. JUSTICE

In the Matter of the Estate of _____ deceased,
 and

In the Matter of The Public Trustee Act, 1906.

Between _____

Plaintiffs

and

Defendant.

Let A. B., of _____, one of the executors of the Will of the above named testator, and _____, the latter being an infant, within eight days after service of this summons on him (inclusive of the day of such service) cause an appearance to be entered for him to this summons which is issued upon the application of _____, the remaining executor of the said Will, for—

1. The sanction of the Court, pursuant to Section 6, Sub-section (2), of the above-mentioned Act, to the transfer of the estate of the said testatrix to the Public Trustee solely, or in the alternative jointly with the said [*the continuing executor*].

2. That directions may be given as to the notice of this application to be given to the persons beneficially interested under the said Will other than the said _____.

3. That the costs of this application may be provided for.

Dated &c.

This summons was taken out by &c.

The Defendant may appear &c.

NOTE.—If the Defendant does not enter appearance within the time and at the place above mentioned, such Order will be made and proceedings taken as the Judge may think just and expedient.

Form No. 33.

SUMMONS IN LUNACY FOR VESTING THE INTEREST OF AN INSANE
TRUSTEE IN THE TRUST PROPERTY IN HIS CO-TRUSTEES.¹

IN LUNACY.

In the Matter of the Trusts of the Will of X. deceased,
and

In the Matter of A. B., a person of unsound mind not
so found by inquisition,
and

In the Matter of the Lunacy Acts, 1890 and 1891.

Let all parties concerned attend the Master in Lunacy in
Chambers at the Royal Courts of Justice on [*day of the week*],
the day of 19, at o'clock in the [forenoon
or afternoon, *as the case may be*], on the hearing of an Appli-
cation on the part of C. D., of , and E. F., of
(who were named in the Will of the above-
named testator as executors and trustees jointly with the above-
named A. B., and who alone proved the same on the day
of 19).

1. That the freehold and leasehold lands, messuages, tenements,
and hereditaments respectively situate at , in the
County of , and in the County of
, now subject to the trusts of the said Will and
all other (if any) the freehold and leasehold lands, messuages,
and hereditaments now so subject may vest in the said C. D. and
E. F., as trustees of the said Will and upon the trusts therein
declared concerning the same, for the estate and interest therein
now vested in the said A. B.

¹ See *in re Leon*, 1892, 1 Ch. 348, *ante*, pp. 90 and 156.

2 That the right to call for a transfer of and to transfer into their own names¹ the sum of £ Two and a half per cent. Consolidated Stock and shares (numbers to inclusive) in the Company, and respectively subject to the trusts of the said Will, and standing or registered in the name of the said X. deceased, and to receive any dividends now due or to accrue due thereon respectively may vest in the said C. D. and E. F., as such trustees as aforesaid.

3. That the right to sue for and recover the sum of £ , secured by an Indenture of Mortgage dated the day of 19 , and made between of the one part and of the other part, or any interest payable or to become payable in respect thereof, and any other chose in action, subject to the trusts of the said Will, may vest in the said C. D. and E. F. as such trustees as aforesaid, and that the lands comprised in the said Indenture of Mortgage may vest in the said C. D. and E. F. for the estate therein of the said A. B., but subject to any equity of redemption subsisting therein under the said Indenture.

4. That the costs and expenses of this application and consequent thereon may be raised and paid out of the trust estate.

Dated the day of 19

This summons was taken out by
 , of , Solicitor
 for the above named C. D. and E. F.

¹ Where any liability attaches to stocks or shares in respect of which an Order is asked for, the words "into their own names" should be omitted.

As to the persons who should be before the Court, the service of the summons on the lunatic trustee, and the evidence necessary to support the application, see *Heywood and Mussey's Lunacy Practice*.

Applications in Lunacy for Vesting Orders are made by summons unless the Judge or a Master directs a petition to be presented (see Rule in Lunacy, 1900). Where the application is for a Vesting Order only, a Master in Lunacy has no jurisdiction to make the Order (see *in re Langdale*, 1901, 1 Ch. 3). In such a case the Master considers the matter and prepares the minutes of such Order (if any) as he thinks should be made, and brings the application with the evidence and the minutes of the proposed Order before the Judge out of Court. The Judge may make the Order upon the summons without attendance of counsel and solicitor or parties, or after such attendance, or may adjourn the summons into Court, or refer the same to the Master for inquiry or further inquiry upon any matter (see Rules in Lunacy, 1892, Rules 22 and 23).

Form No. 34.

CONVEYANCE OF THE REAL ESTATE OF A PERSON WHO HAS DIED
 INTESTATE BY HIS PERSONAL REPRESENTATIVES TO HIS HEIR.

This Indenture made the _____ day of _____ 19____ ,
 between A. B., of &c., and C. D., of &c., of the one part and
 E. F., of &c., of the other part :

Whereas X., late of &c., being seised of certain hereditaments
 situate in the Counties of _____ and _____ , and elsewhere,
 for an estate of inheritance in fee simple in possession, died on
 the _____ day of _____ 19____ , intestate, leaving the said E. F. his
 heir-at-law :

And whereas on the _____ day of _____ 19____ , letters of
 administration of the real and personal estate of the said X.
 were duly granted to the said A. B. and C. D. out of the Principal
 Registry of the High Court of Justice :¹

And whereas the said A. B. and C. D. have paid the funeral
 and testamentary expenses of the said testator and all his debts
 of which they have notice :

And whereas the said A. B. and C. D. have at the request
 of the said E. F. agreed to convey the said hereditaments to
 him in manner and subject as hereinafter mentioned .

Now this Indenture witnesseth that for effectuating the said
 agreement and in consideration of the premises they, the said A. B.

¹ In the case of a specific devise the recitals preceding the recital of payment of the testator's funeral and testamentary expenses and debts will be as follows:—

“Whereas X., late of &c., duly made his Will dated the _____ day of _____ 19____ , whereof he appointed the said A. B. and C. D. executors, and whereby, amongst other things, he devised to the said E. F. the hereditaments hereby conveyed or intended so to be; and such Will was on the _____ day of _____ 19____ , duly proved by the said A. B. and C. D. in the Principal Registry of the High Court of Justice: And whereas the said testator was at the time of his death seised of the said hereditaments so devised by his said Will as aforesaid in fee simple in possession free from incumbrances.”

And in the parcels in the operative part the hereditaments, the subject of the specific devise, will be described. Where the devise is a general one the recital of the Will will set out the devise and the property will be conveyed as in the form above.

and C. D., as personal representatives of the said X. deceased, do and each of them doth hereby grant unto the said E. F. and his heirs all the real estate which on the death of the said X. devolved upon and became vested in the said A. B. and C. D. to have and to hold the same unto and to the use of the said E. F., his heirs and assigns, subject, nevertheless, to a charge for all moneys (if any) which the personal representatives of the said X. are liable to pay.¹

In witness &c.

Form No. 35.

ASSENT BY PERSONAL REPRESENTATIVE TO DEVISE OF REAL ESTATE CONTAINED IN THE WILL OF A TESTATOR WHO DIED AFTER THE LAND TRANSFER ACT, 1897, CAME INTO OPERATION.²

I, A. B., of &c., the sole executor of the Will of X., late of &c., deceased, dated the day of 19 , and duly proved by me on the day of 19 , in the Principal Registry of the High Court of Justice, do hereby, as such executor, assent and consent to the devise to C. D. in the said Will contained of [*description of subject of devise*], but subject to and charged with all moneys (if any) which I, as such personal representative of the said X. as aforesaid, am liable to pay.

(*Signature of the Executor.*)

Witness to the above Signature—

¹ It must be borne in mind that where the property to be conveyed is subject to mortgage debts, or to the rights of the testator's widow to dower, or under The Intestates' Estates Act, 1890 (53 and 54 Vict. c. 29), the conveyance should be made subject to the moneys owing on the mortgage securities or to the rights of the widow, as the case may be, as well as to moneys which the personal representatives are liable to pay. And see, *ante*, Section 3 of the Land Transfer Act, 1897, and the notes thereon.

² See, *ante*, Section 3 of The Land Transfer Act, 1897, and the notes thereon.

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